TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 197.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, APPELLANT,

vs.

THE CITY OF CLEVELAND AND THE FOREST CITY RAILWAY COMPANY.

FILED FEBRUARY 5, 1906.

No. 321.

THE CITY OF CLEVELAND AND THE FOREST CITY RAILWAY COMPANY, APPELLANTS,

vs.

THE CLEVELAND ELECTRIC RAILWAY COMPANY.

FILED JUNE 14, 1906.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

(20,083 and 20,286.)



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1 UNITED STATES OF AMERICA,
Northern District of Ohio, Eastern Division, ss:

Record of the proceedings of the Circuit Court of the United States within and for the Eastern Division of the Northern District of Ohio, in the cause and matter hereinafter stated, the same being finally disposed of at a regular term of said Court begun and held at the city of Cleveland, in said District, on the first Tuesday in October, being the third day of said month, in the year of our Lord one thousand nine hundred and five, and of the Independence of the United States of America the one hundred and thirtieth, to-wit, on the 4th day of December, A. D. 1905.

Present: The Honorable Robert W. Tayler, United States District Judge.

No. 6851. Chancery.

THE CLEVELAND ELECTRIC RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY.

Said action was commenced on the 21st day of March, A. D. 1905 and proceeded to final disposition at the term and day above written, and during the progress thereof, pleadings and papers were filed, process was issued and returned and orders of the court were made and entered in the order and on the dates hereinafter stated, to-wit:

2 (*Bill of Complaint.*)

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

In Equity.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendants.

Bill of Complaint.

To the Honorable the Judges of the Circuit Court of the United States for the Northern District of Ohio, Eastern Division:

The above named complainant, The Cleveland Electric Railway Company, a corporation duly organized and existing under the laws of the State of Ohio, brings this its bill of complaint against

the above-named defendants, The City of Cleveland, which is a municipal corporation of the State of Ohio, within said District, and The Forest City Railway Company, which is a corporation of the State of Ohio, having its principal office in said District; and says:

I.

The complainant is a corporation organized and existing under the laws of the State of Ohio, owning and operating various lines of street railway in the city of Cleveland and vicinity, as in this bill hereinafter more particularly set forth.

The defendant, the City of Cleveland, is a municipal corporation organized under the laws of the State of Ohio, and as respects the matters and things hereinafter set forth as to the ordinances affecting this complainant, said defendant acts and has acted under delegated power from the legislature of the State of Ohio; and,
3 so acting, has, by legislative enactment, made sundry contracts with your orator and its predecessors in interest under which it is now operating said lines of railway in the City of Cleveland.

The defendant, The Forest City Railway Company, is a corporation organized under the laws of the State of Ohio, for the purpose of constructing, maintaining and operating lines of street railway in the City of Cleveland.

II.

That the amount in controversy in this action, which is a civil action, exceeds, exclusive of interests and costs the sum of five thousand dollars, and is a controversy arising under the Constitution of the United States in this;—that your orator seeks relief against the defendants in this bill by reason of an attempt on the part of the defendants to enforce against your orator a law of the State of Ohio impairing the contract rights of your orator, in contravention of and in violation of the Constitution of the United States, and especially contrary to and in violation of Section 10, Article 1, thereof.

III.

Your orator shows, by way of explanation and in order to avoid repetition in this bill, that "Garden Street" and "Ohio Street," as referred to in the several ordinances hereinafter mentioned, and otherwise referred to, were subsequently united under one name and designated "Central Avenue," which is the name by which said former Garden Street and Ohio Street are now known.

IV.

Your orator is a consolidated company organized in the year 1893, and was formed by the consolidation of the following-named constituent companies which, at and prior to the consolidation,

owned and operated street railways in the City of Cleveland
4 under ordinances duly passed by said municipality and accepted by said companies; and, by the terms of such consolidation and the force and effect thereof, as provided by the statutes of Ohio, your orator became and is possessed of all the rights, franchises, privileges and property, possessed by said constituent companies and each of them. The constituent companies so consolidated were as follows:

The east Cleveland Railroad Company, which was operating lines of street railway in said city described generally as the Prospect Street and Euclid Avenue line, together with the Wade Park Avenue, Cedar Avenue, and Garden Street lines and various branches and extensions thereof.

The Broadway & Newburgh Street Railroad Company, which was operating a line of street railway from Newburgh (at that time a southern suburb of the city of Cleveland) to the central part of the city.

The Brooklyn Street Railroad Company, which was then operating a line from Brooklyn (then a suburb of said city) and the so-called South Side of said City, to and through the Public Square, through Ontario Street and Scovill Avenue, to the southeasterly portion of the city.

The south Side Street Railroad Company, which was operating a line of railway from the south Side so-called, through Scranton and Jennings Avenues.

And your orator shows that each of said companies, by the consolidation of which your orator was formed, was operating under grants from the city of Cleveland authorizing the continued operation of said roads for a period of years, and no one of which grants expires before the first day of July, 1914.

V.

5 Your orator is also the owner, by purchase, of all and singular the lines of railway, rights, privileges and franchises, of The Cleveland City Railway Company; such lines of railway, rights, privileges and franchises, having been acquired by your orator so by purchase on or about July 1st, 1903. Said The Cleveland City Railway Company, the property of which was so purchased by your orator and of which it is the successor in interest as aforesaid, was a consolidated company formed by the consolidation of The Woodland Avenue & West Side Street Railroad Company and the Cleveland City Cable Railway Company, each of which companies was a corporation organized under the laws of the State of Ohio for the purpose of operating lines of street railway in the city of Cleveland; and, at the time of such consolidation The Woodland Avenue & West Side Street Railroad Company was operating lines of railway described generally as the Woodland Avenue Lines and the West Side Lines; and The Cleveland City Cable Railway Company was operating lines from the Public Square out Superior Street and St. Clair Street to the easterly limits of the city. None

of the grants under which said The Cleveland City Cable Railway Company was operating expires before January, 1910.

VI.

The total mileage of single track which is operated by your orator, as the successor in interest of all of said various companies hereinbefore mentioned, is about 236 miles, of which the mileage of the lines described in the ordinance of the City of Cleveland passed January 11th, 1904, purporting to grant certain rights to defendant, The Forest City Railway Company, and hereinafter more fully set forth, is about 12 miles.

6 VII.

Your orator's contracts with the City of Cleveland, growing out of said various consolidations and the obligations imposed by the various ordinances hereinafter referred to, require it to operate said entire system, and, as part thereof, to operate through cars over different portions of said lines, and to give transfers from one line to another, as defined in the ordinances of the city of Cleveland; and your orator shows that such obligations upon its part are continuing obligations, running to the expiration of its franchises from the City of Cleveland, to-wit: in 1914.

VIII.

Of the lines of railway of which your orator is so the owner and now operating, the first was constructed by the East Cleveland Railroad Company, a corporation incorporated in the year 1859, and on November 1st, 1859, July 3rd, 1860, and April 15th, 1862, said East Cleveland Railroad Company received grants from the city of Cleveland for the operation of a line of railway beginning at the easterly city limits at Willson avenue; thence via Euclid Avenue, Case Avenue, Prospect Street, Erie Street, and Euclid Avenue, to and around the southerly and westerly sides of the Public Square, to and on Superior Street, and through Superior Street to Water Street. The grants so made to said East Cleveland Railroad Company were for twenty years from September 20th, 1859, expiring on September 20th, 1879; and under the grants so made, the lines of railway therein authorized were shortly thereafter constructed, and constituted the main line of the east Cleveland Railroad Company.

IX.

On July 23rd, 1862, the East Cleveland Railroad Company received from the trustees of East Cleveland Township, which township adjoined the City of Cleveland upon the east, and which
7 has since become part of said City, a right to construct and operate a street railroad on Euclid Avenue from its intersection with Willson Avenue easterly to Doan's Corners so-called now the corner of Euclid Avenue and Fairmount Street. Under said grant, the line of railway therein authorized was shortly thereafter constructed and put in operation as an extension of and part

of the main line of said East Cleveland Railroad Company; so that upon the completion of said extension, the main line of said company was extended easterly from Willson Avenue to Doan's Corners so-called, now the corner of Euclid Avenue and Fairmount Street.

X.

Said main line of said East Cleveland Railroad having been constructed and put in operation under the ordinances aforesaid, on or about January 14th, 1868, the council of the City of Cleveland granted to said East Cleveland Railroad Company the right to construct and operate a street railroad in connection with its main line and as an extension thereof; beginning at the intersection of Prospect and Brownell streets; thence along the center of Brownell Street to its intersection with Garden Street; thence easterly along the center of Garden Street to and across Willson Avenue, to the easterly boundary of the city of Cleveland. Said grant to said East Cleveland Railroad Company to so construct such extension of its main line out Garden Street as aforesaid was to continue during the period of twenty years from and after January 14th, 1868; and it was also in said ordinance granted permission to continue to use and occupy the streets, avenues and public grounds over which its said main line was then constructed and operated, westerly from the junction of said road with its main line to its westerly terminus, for the same period of time. And thereby your orator shows that there was
8 granted to said East Cleveland Railroad Company the right to construct and operate said road upon Brownell Street and Garden Street in connection with its main line, and to continue the operation of said Garden Street extension and its main line from Brownell and Prospect streets westerly on Prospect Street to Erie Street; on Erie from Prospect Street to Euclid Avenue; on Euclid Avenue from Erie Street to and around the southerly and westerly sides of the public square to Superior Street; thence westerly on Superior Street to Water Street. The grant so made was duly accepted by said East Cleveland Railroad Company, and lines of railway therein authorized constructed and put in operation; and thereby your orator, by contract with the city of Cleveland, acquired the right to operate its said main line and extension thereof from Brownell Street, to Garden Street, and through Garden Street to the easterly limits of the city of Cleveland, up to January 14th, 1888.

XI.

At the time of the construction of said Garden Street extension of said main line of the East Cleveland Railroad Company, a portion of the Village of East Cleveland which lay adjoining the easterly limits of the city of Cleveland and is now part of said city was without street railroad facilities upon Garden Street as it extended through said territory, and on or about March 30th, 1868, the council of the Village of East Cleveland granted to the East Cleveland Railroad Company the right to construct and operate an extension of its lines upon Garden Street, beginning at the easterly line of the City of

Cleveland in Willson Avenue; thence easterly in the center of Garden Street to its intersection with the center line of Baden Street; thence southerly in the center line of Baden Street to the southerly
9 line of Wade Street; said grant to continue for the period of twenty years from March 30th, 1868; and which grant from said Village of East Cleveland was duly accepted by said East Cleveland Railroad Company, and the line therein authorized constructed and put in operation; and by virtue thereof the said East Cleveland Railroad Company acquired and possessed the right, by contract from the defendant city of Cleveland and the council of the Village of East Cleveland, to maintain and operate, in connection with and as an extension of its main line, its line of railroad connecting with the original main line at Prospect and Brownell streets, and extending out Garden Street to the city limits, and easterly as defined in said ordinance of March 30th, 1868, passed by the council of the Village of East Cleveland.

XII.

On or about August 2nd, 1870, the Village of East Cleveland made an agreement with the East Cleveland Railroad Company by which the tracks of the latter were removed from the southerly side of Euclid Avenue in said Village to the center of said avenue, and in and by said agreement it was recited that said tracks "have been constructed and operated upon the southerly side of the carriage way of said Euclid Avenue, and being an extension or branch of its main road located in the City of Cleveland."

XIII.

On or about March 25th, 1873, the said East Cleveland Railroad Company and the said City of Cleveland desiring to have the Garden Street line of said East Cleveland Railroad Company connected with the main line at the intersection of Erie and Prospect Streets instead of as originally at the intersection of Prospect and Brownell streets, the city council of said city, by resolution accepted and acted upon by said East Cleveland Railroad Company, granted permis-
10 sion to said Company to lay a double-track street railroad from its main line, at the intersection of Erie and Prospect Streets, through Erie Street to Ohio Street; thence through Ohio Street to Garden Street, connecting with Garden Street extension at this point as the same had originally been constructed; and requiring that said company should, upon the completion of said tracks in Erie and Ohio Streets, take up and remove its tracks in Brownell Street from the main track in Prospect Street to Ohio Street, whereby, under authority of said resolution and the same having been carried out, the line of the Garden Street extension of such original mainline was as follows: Intersecting the main line at Prospect and Erie Streets; thence running through Erie Street to Ohio Street; thence through Ohio Street to Garden Street; thence through Garden Street to Baden Street; thence through Baden Street to Quincy Street. And by virtue of the contract obligations and rights so established, the said East Cleveland Railroad Company was required to operate said

Garden Street extension in connection with said main line, and over that portion of the main line beginning at the intersection of Erie and Prospect streets, continuing through Erie to Euclid Avenue, through Euclid Avenue to and around the Public Square to Superior Street, and in Superior street to Water Street, as hereinbefore stated. And your orator shows that, by virtue of the said several contracts under which the said East Cleveland Railroad Company had so constructed its main line and said Garden Street extension thereof, it was required to operate said extension in connection with said main line, using a material portion thereof for the purpose of said operation, and thereby possessed under said contract and its acceptance and its completion of said railroads, the right to continue the
11 operation of said main line and said Garden Street extension in connection with said main line, to the 20th day of September, 1879.

XIV.

On or about May 23rd, 1876, an ordinance was duly passed by the council of the City of Cleveland and accepted by said East Cleveland Railroad Company, by which the said East Cleveland Railroad Company was authorized to extend its Garden Street lines from the then easterly terminus thereof at Baden Street, along said Baden Street to Quincy Street, along Quincy Street to New Street, along New Street to Garden Street, there to connect with the existing tracks upon Garden Street. And in and by said ordinance the said East Cleveland Railroad Company was required to equip and operate said Garden Street tracks as so extended, in connection with and as part of its original Garden Street Extension and its main line of road; said main line being as hereinbefore set forth; whereby the said East Cleveland Railroad Company became obligated, as between it and the city, and acquired the right, as between it and the city, to continue the operation of said Garden Street tracks as extended in connection with the main line of tracks of said East Cleveland Railroad Company; and in and by said ordinance it was provided that such rights were to continue for the period of twenty years, whereby said East Cleveland Railroad Company acquired the right to the continued operation of its entire system of main line and said Garden Street extension and said extended tracks at least for the period of twenty years from May 23rd, 1876.

XV.

On or about September 15th, 1879, the city council of the city of Cleveland passed another ordinance relating to the operation
12 of the lines of railroad of said East Cleveland Railroad Company; said ordinance having been passed, as therein recited, by authority of an act of the legislature passed June 12th, 1879, and it being therein recited that the said East Cleveland Railroad Company, then operating a street railroad in the city of Cleveland by virtue of a grant or permit previously obtained, had made application in writing for a renewal of such grant "and a permit to maintain and operate its said street railroad in and along the streets as heretofore and now located and operated, for the period of twenty-

five years from and after the 20th day of September, 1879." And in the ordinance passed relative to such application it was provided, that the East Cleveland Railroad Company, its successors and assigns, were authorized to reconstruct, maintain and operate its double-track street railroad, with the necessary switches, turnouts and turntables, as theretofore constructed and then maintained and operated in the city of Cleveland. And in and by said ordinance portions of the streets of the city of Cleveland in which the said company had theretofore constructed and was then operating railroads are set forth, namely; The original main line of the company described from its westerly terminus as commencing at the intersection of Water and Superior streets; thence through Superior street to and around the south and west roadways of Monumental Square to Euclid Avenue; thence through Euclid Avenue to Erie Street; thence through Erie Street to Prospect Street; thence through Prospect Street to Case Avenue; thence through Case Avenue to Euclid Avenue; thence through and along Euclid Avenue to Willson avenue. But your orator submits and shows that said ordinance, in legal effect, granted to said East Cleveland Railroad Company the right to continue the operation of all its lines of railroad theretofore constructed and in operation in Cleveland, including the main line which is in
13 said ordinance described and the extension thereof which had been constructed upon Garden Street as hereinbefore set forth, and with respect to which extension said East Cleveland Railroad Company was obliged to maintain and operate the same as part of and in connection with its main line until 1896. And by the terms of said ordinance of September 20th, 1879, the said East Cleveland Railroad Company was authorized to continue the operation of its entire system, including its tracks upon Garden Street in connection with its main line, for the period of twenty-five years from September 20th, 1879.

XVI.

That on or about March 22nd, 1860 another ordinance was passed by the council of the city of Cleveland, granting permission to the East Cleveland Railroad Company to extend its tracks in Garden Street, which had been built and constructed under the various ordinances hereinbefore referred to; and in and by said last-mentioned ordinance said East Cleveland Railroad Company was empowered to extend its tracks in Garden Street from the intersection of Baden and Quincy streets in an easterly direction along Quincy Street to the intersection of Lincoln Avenue, and to equip and separate its said extension and all the Garden Street tracks for the period of twenty-five years, whereby the said city of Cleveland, having already, as hereinbefore set forth, granted to the East Cleveland Railroad Company the right to operate its entire system until September 20th, 1904, in and by the ordinance last mentioned undertook to grant the right to said Company to operate an extension of said system, namely; the Garden Street Tracks, for a period of six months beyond the expiration of the grant theretofore made to operate the entire System.

XVII.

14 On or about February 9th, 1885, the city council of the city of Cleveland passed another ordinance authorizing and empowering the east Cleveland Railroad Company to extend its Garden Street tracks from the terminus of its then present track at the intersection of Quincy Street and Lincoln Avenue in an easterly direction on and along said Quincy Street to Woodland Hills Avenue, and to equip and operate said extension as a single-track railroad with all necessary switches, turnouts and turntables, in connection with its said Garden Street tracks and its main line; and in and by said ordinance providing that the grant therein made should terminate with the grant for the main line of the East Cleveland Railroad Company; which said ordinance so passed was duly accepted by said East Cleveland Railroad Company, and the extension therein provided for built, equipped, and put in operation, whereby your orator shows that a contract arose between the East Cleveland Railroad Company and the City of Cleveland by which said company was empowered to continue the operation of the Garden Street tracks in connection with the main line of said East Cleveland Railroad Company; such right to terminate only with the grant for the operation of said main line. And your orator shows, as hereinbefore set forth, that the grant for the operation of the main line of said East Cleveland Railroad Company did not expire prior to September 20th, 1904.

XVIII.

On or about June 17th. 1887, the council, of the city of Cleveland passed another ordinance providing for the extensions of tracks of the East Cleveland Railroad Company upon Garden Street, which ordinance was duly accepted by said company; the said extension thereby authorized being from the intersection of its then present track with Baden Avenue upon Garden street, in an easterly
15 direction along and upon Garden Street to the Easterly line of Lincoln Avenue; and providing that the right to operate such extension should terminate with the grant for the Garden Street main line; and your orator shows, as hereinbefore set forth, that the grant for the Garden Street main line terminated at the same time as the original main line of the East Cleveland Railroad Company, and that the Garden Street main line so referred to in said last-mentioned ordinance included the entire lines of the East Cleveland Railroad Company as the same had been created and defined in the ordinances hereinbefore referred to.

XIX.

That thereafter, on July 13th, 1888, the city council of the city of Cleveland passed an ordinance granting to the East Cleveland Railroad Company the right to change its motive power upon certain portions of its lines from horse power to electric power; and in and by said ordinance it was provided that in consideration of the large expenditure of money and of the improved facilities to be afforded

the public, upon said Main and the Cedar Avenue lines, the grant therein made should continue in force for the period of twenty-five years from and after the date of the passage of said ordinance. Your orator further shows that, in pursuance of such authority, the said East Cleveland Railroad Company did proceed at large expense to equip the portions of its lines in said ordinance mentioned with electricity, and has and did at all times, and your orator since the acquisition of said lines has at all times, complied with all and singular the conditions and requirements of said ordinance. And your orator shows that under the terms of said last-mentioned ordinance the said East Cleveland Railroad Company was only required to equip a portion of its lines with electricity, but it was therein provided that, upon request of the council, it should extend
16 the electrical equipment over other portions of its lines; and thereafter, on or about May 13th, 1899, the council, by resolution, required of said East Cleveland Railroad Company the extension of the Electrical equipment over its original main line from Willson Avenue through Euclid Avenue to Case Avenue, through Case Avenue to Prospect Street, through Prospect to Erie Street, through Erie to Euclid Avenue, through Euclid Avenue to and around the Public Square to Superior Street, and thence through Superior to Water Street; and also such portion of its Cedar Avenue extension as had not theretofore been equipped with electricity.

XX.

On or about March 10th, 1890, the city council of the City of Cleveland passed an ordinance authorizing the East Cleveland Railroad Company to substitute electrical motive power for horse power upon its Garden Street extension of its main line as hereinbefore more particularly described; and in and by said ordinance providing that the right to operate said Garden Street extension of said main line continue during the term of the company's then present grant for the operation of tracks upon the Garden Street extension, and your orator shows that by reason of the various ordinances hereinbefore referred to there had been granted to the East Cleveland Railroad Company the right to continue the operation of its tracks upon Garden Street and the extensions thereof up to the termination of the grant for the operation of the main line of said East Cleveland Railroad Company, and, as hereinbefore set forth, the right to operate the main line of said company, under the contracts then existing between it and the city of Cleveland, did not expire and do not expire until July 13th, 1913, whereby the said East
17 Cleveland Railroad Company, by virtue of the ordinances hereinbefore set forth and upon the acceptance of said ordinance and the expenditure of large sums of money for the equipment of said Garden Street extensions with electricity, acquired from the council of the city of Cleveland the right to continue the operation of said Garden Street tracks and extensions thereof until the 13th day of July, 1913.

XXII.

On or about March 30th, 1891, the city council of the city of Cleveland passed an ordinance, which was duly accepted by said East Cleveland Railroad Company, granting the right to said company to construct and operate a second or additional track upon Central Avenue (formerly Garden Street) from the east line of Willson Avenue to the right-of-way of the Cleveland and Pittsburgh Railroad Company, and to connect said tracks so authorized with the tracks then in and upon Central Avenue at Willson Avenue and at the Cleveland and Pittsburgh railroad tracks; the said additional track herein provided for covering a distance of about 2400 feet; and in and by said ordinance it was provided that the same should be accepted in writing by said railroad company, and that such acceptance should be deemed a contract on the part of said railroad company with the said city to perform all and singular the matters and things required in said ordinance to be performed; and in and by said ordinance it was further provided that the right therein granted should be valid until the expiration of the grant for said company's main line.

Your orator shows that, by force of this ordinance which it alleges was duly accepted by said railroad company and has in all respects been complied with by it and its predecessor, the right was in express terms granted to said railroad company by
18 the city to lay a double-track upon the portion of Central Avenue (formerly Garden Street) in said ordinance described, to be operated as part of said system and that the right to so operate should continue until the expiration of the grant for said company's main line; and your orator shows, as hereinbefore more specifically set forth, that the grants for the operation of the main line of said company, by express ordinance, did not and do not expire until the 13th day of July, 1913.

XXII.

On or about April 20th, 1891, the city council of the city of Cleveland passed an ordinance granting to the East Cleveland Railroad Company permission to lay an additional or second track in Quincy Street from New Street to Woodland Hills Avenue, authorizing said company to connect the tracks therein authorized with the tracks then laid upon New Street. Your orator shows that the permission so granted was a permission to lay an additional or second track on part of the Garden Street extension of the main line of said company, and it is in said ordinance provided that the right therein granted shall be valid until the expiration of the grants for said company's tracks in Quincy Street east of Lincoln Avenue, to-wit: July 13th, 1913, whereby your orator shows that the city council, in the granting of permission to lay an additional or second track in Quincy Street, being a portion of the Garden Street extension, expressly recognized that the grant to the company for the operation of said tracks extended until July 13th, 1913. And your orator shows that the grants for said company's tracks in said

Quincy Street east of Lincoln Avenue, referred to in said ordinance, were granted by ordinance of February 9th, 1885, hereinbefore set forth, whereby a grant was made to said East Ceveland Railroad Company to so extend its Garden Street extension east of Lincoln Avenue, and wherein it was provided that said company
19 should equip and operate said extension in connection with its main line, and that said grant should terminate with the grant for the main line.

XXIII.

On or about July 17th, 1893, the city council of the city of Cleveland passed an ordinance granting to your orator, the successor of the East Cleveland Railroad Company as hereinbefore set forth, permission to extend its double-track street railroad from its then present tracks at the intersection of Prospect and Erie streets to the intersection of Prospect and Ontario streets, and thence by northerly curves connecting with its lines in Ontario Street; also to extend its tracks from the intersection of Superior and Seneca Streets along Seneca Street to Lake Street; thence along Lake Street, and thence along Ontario Street to the center of Monumental Square, connecting with the then present tracks in Ontario Street; and to construct and maintain such extensions and operate the same by electricity upon the terms and conditions in said ordinance mentioned; and among other conditions in said ordinance mentioned; and among other conditions of said ordinance, it was provided that the company should comply with and perform all the terms and conditions of the resolution adopted by the city council on the 29th of May, 1893, in reference to the consolidation of the various companies forming your orator, as hereinbefore set forth. And in said ordinance it was also provided that the council should have the right at any time to require the company to operate its cars over the entire length of any of the lines or extensions of said constituent companies, in the same manner and between the same termini as cars were operated prior to the consolidation of said constituent companies into your orator; that the council might require night cars to be operated the entire length of each of the lines of the company at least hourly
20 each way between midnight and six A. M., daily; that the company should assume the expense of sprinkling in addition to that then required of it by existing ordinances; and that in consideration of the grant made by the said council, the company agreed therein that all the terms and provisions of the section relating to additional burdens for sprinkling *et cetera* should apply to and be a condition of all the grants theretofore made by the council to said constituent companies or either of them; and in and by said ordinance it is provided that the grant therein made shall be in force until the 13th day of July, 1913. And your orator shows that the said last-mentioned ordinance relates to a portion of the line originally constructed as part of the Garden Street extension of the main line of the East Cleveland Railroad Company, and requires of your orator the operation of all of its lines and tracks, including said Garden Street extension, over the lines of track pro-

vided for in said ordinance. And your orator further shows that said ordinance so providing for additional tracks was passed by the city council with special reference to the running of cars operated upon the Garden Street extension, and that immediately upon the completion and equipment of said tracks for operation, all of the cars operated upon the Garden Street extension were required by the City to be operated upon the tracks provided for in said last-mentioned ordinance, and, by the terms of said ordinance, as hereinbefore set forth, the obligation to continue such operation and the right of the company to so operate it is provided shall continue until the 13th day of July, 1913.

21 XXIV.

Your orator further shows that, on February 19th, 1894, the city council of the city of Cleveland, determining it to be to the public interest to have established a cross-town line upon Willson Avenue, duly passed an ordinance entitled:

"An Ordinance granting permission to The Cleveland Electric Railway Company and The Cleveland City Railway Company to extend their tracks in Willson Avenue:—

which said ordinance was duly accepted by both of the companies therein named. By the terms of said ordinance the said companies were required to build and equip a double-track electric street railway along Willson Avenue from Broadway to the northerly terminus thereof; a portion of said railway to be built by your orator and the other portion by The Cleveland City Railway Company. And in — by section 5 of said Ordinance it was provided that the operation of cars on said railway by The Cleveland City Railway and by your orator shall be under the control and regulation of the council; and by section 6 of the said ordinance it is provided, in substance, that passengers on any car operated on any part of said Willson Avenue, upon payment of one fare, shall be entitled to be transferred to any other line of either said The Cleveland Electric Railway Company (your orator) or said The Cleveland City Railway Company intersecting or coming to Willson Avenue, and with the additional right to transfer from such second line to a car on any other line of the company operating the same which crosses the Cuyahoga River, and providing that passengers on any line of either of said companies intersecting or coming to Willson Avenue shall be entitled to transfer to Willson Avenue and have a continuous ride thereon.

22 Section 7 of said ordinance requires the paving of the tracks and the space between the tracks and one foot outside of each outer rail; also requiring of the companies the widening of the roadway of said Willson Avenue between Euclid Avenue and Scovill Avenue five feet on each side; which last-mentioned requirements were in addition to existing obligations with respect to paving and widening the street. And in and by section 10 of said ordinance it is provided that this grant shall be in force until the first day of July, 1914.

Your orator further shows that the grants under which it was

operating at the time of the passage of the last-mentioned ordinance, as to several of its lines, expire on the first day of July, 1914, and that the obligations imposed upon your orator by virtue of said ordinance in this paragraph referred to are continuing obligations, requiring of your orator the performance of all and singular the conditions of said ordinance, including the issing of transfers from its other lines and accepting transfers from the Willson Avenue line, up to the first day of July, 1904. And your orator shows that Willson Avenue and the lines of road therein constructed are intersected by the Central Avenue (formerly Garden Street) and Quincy Street tracks constructed under the various ordinances hereinbefore mentioned; and your orator submits that the council, as it might lawfully do, did, by virtue of the ordinance of February 19th, 1894 require of your orator, in the operation of its said Central Avenue and Quincy Street tracks, to give and receive transfers from the Willson Avenue cross-town line, and that said Willson Avenue line and said other lines of your orator intersecting said Willson Avenue should be operated together, so that passengers should have free
23 transfers as between the Willson Avenue line and such intersecting lines, thereby subjecting your orator to such requirements; also granting to your orator the right to continue the operation of such entire system up to the first day of July, 1914. And your orator shows that unless it has the continued right to operate its Central Avenue and Quincy Street extensions until the first day of July, 1914, it cannot fulfill the obligations created and imposed nor exercise the right granted by said ordinance of February 19th, 1894; and your orator submits that, by virtue of said ordinance of February 19th, 1894, all of the lines of your orator, including the Garden Street (Central Avenue) extensions hereinbefore referred to, which intersects Willson Avenue, were extended to expire on the first day of July, 1914.

XXV.

On June 25th, 1894, the city council of the city of Cleveland passed an ordinance which was duly accepted, and has at all times been complied with by your orator, granting to it the right to extend and operate its double-track street railroad in Quincy Street from New Street to Willson Avenue; that the double-track street railroad which your orator was, at the time of the passage of this ordinance operating in Quincy Street and therein referred to, was part of the Garden Street extension of the main line of the East Cleveland Railroad Company, and had been constructed and operated under the various ordinances hereinbefore referred to; and in and by the provisions of said last-mentioned ordinance your orator, as the successor in interest of said East Cleveland Railroad Company and the other companies forming your orator as a consolidated company, was granted permission to extend and operate by electricity its double-track street railroad from its then present tracks in Quincy Street westerly to Willson
Avenue, connecting by curves with the cross-town line upon
24 Willson Avenue as in this bill hereinbefore more particularly described; as in and by said ordinance it was provided that the right therein granted should terminate with the grant for the

said company's then present line in Quincy Street; and your orator shows that by reason of the various ordinances and contracts hereinbefore referred to, the grant for said company's then present line in Quincy Street did not and does not expire prior to July 1st, 1914.

XXVI.

That prior to the consolidation which forms your orator, the East Cleveland Railroad Company, The Broadway & Newburgh Street Railroad Company, The Brooklyn Street Railroad Company and the South Side Street Railroad Company, were operating independent lines of street railway in the city of Cleveland, there being no interchange of traffic between said roads except that the said Brooklyn Street Railroad Company and The South Side Street Railroad were required to give and receive transfers to and from each other at certain points, and the public was required, in patronizing any one of said lines and desiring passage on another, to pay an extra fare, with the exception hereinabove stated. And thereupon on or about the 29th of May, 1893, the council of the city of Cleveland, by legislative enactment, prescribed the terms and conditions upon which said various companies last above named might be consolidated into your orator, and, by the terms of such action, the city, through its council, consented to such consolidation upon the condition that thereafter all of the lines of said different railroads should be operated by your orator as one system, and that only one fare should be charged for a continuous ride on or over any line of railway formerly owned by any one of said constituent companies and any line of any other of said constituent companies within the limits of the City of Cleveland; and also upon the condition that passengers on any of such lines paying one fare should be entitled, without extra or additional charge, to be transferred to any other of said lines and have a continuous ride thereon for such single fare, and requiring that your orator should, within ten days after the adoption of the resolution embodying such terms and conditions, file with the City Clerk in writing an acceptance of the terms and an agreement to perform the same. And thereafter, on or about the same date, your orator in writing, as by said resolution required, duly accepted the terms and conditions prescribed in said resolution and agreed to perform the terms of the same. And since the completion of said consolidation your orator has operated all of the lines which heretofore belonged to the constituent companies as one entire system, of which the former lines of the East Cleveland Railroad Company were a part; and in carrying out the terms and conditions so prescribed by said council as a condition precedent to said consolidation, your orator has united all of the lines formerly operated by said various companies in such manner as that many of the original lines, including the lines of track built as the Garden Street extension have long since lost their identity as distinct lines of your orator's company; and your orator has been operating under the terms of said consolidation ordinance for one fare, and with a system of transfers, continuous lines of through cars over various parts of the system which were, before said consolidation, independent lines of said

various railroad companies, and by virtue of said consolidation it became and was necessary that your orator, in carrying out the terms and conditions prescribed by the council, should establish such through car lines, and that if it should be deprived of the right to operate that portion of its present system which was originally an extension of the main line of the East Cleveland Railroad
26 Company upon Garden Street, it would be impracticable for it to carry out its agreement made with the city at the time of the consolidation with respect to the operation of all of its lines as one system, at one fare, and to give continuous rides and transfers thereover.

XXVII.

On or about the first day of July, 1903, your orator acquired by purchase, as hereinbefore set forth, all and singular the railroad, tracks, property, rights and franchises, of The Cleveland City Railway Company, which was then operating various lines of railroad in competition with the lines then operated by your orator; and by virtue of its acquisition of said lines of The Cleveland City Railway Company it has again been required to establish additional through lines and through car service, so that it has resulted, and the situation now is, that by virtue of the statute in such cases made and provided, the tracks which were built upon Garden Street as part of an extension of the main line of the East Cleveland Railroad Company have now become part and parcel of a through system, covering all of the street railway tracks in the city of Cleveland, being a total mileage of about two hundred and thirty-six miles, and through car service is being given over said entire system, and the said Garden Street Extension is not now, and has not been since the consolidation of 1893, treated by your orator or the city council or the public as having any identity separate and distinct from, but is and has been since said consolidation treated as an integral part of the entire system of roads in operation by your orator, and that were your orator to be now deprived of the right to operate the tracks or any substantial portions thereof built upon Garden Street (now Central Avenue) as an extension of the original main line of the
27 East Cleveland Railroad Company, it would be impracticable for it to continue to operate the general system with through car service and at one fare with transfers, which it is now conducting over such entire system so established as hereinbefore set forth.

XXVIII.

Your orator further shows that, notwithstanding its right in the premises as hereinbefore set forth and the provisions of its several contracts with the City of Cleveland, and in direct violation and impairment of the same, the defendant city of Cleveland, acting under delegated power from the state of Ohio, by action of its common council on the 11th day of January, 1904, without having previously advertised any application for such grant, and without submitting the same in any manner to competitive bidding, and without compliance or attempted compliance with the statutes relating

to the granting an original right to construct and operate a street railroad, as distinguished from the grant of a renewal of an existing right, passed an ordinance in the words and figures following, to-wit:

Ordinance No. 42240.

An ordinance granting to the Forest City Railway Company, its successors and assigns, the renewal right to maintain and operate the existing street railroads in the following streets:

Commencing at the intersection of Prospect and Erie Streets, in the city of Cleveland, State of Ohio; thence southerly on, over and along Erie Street to Central Avenue; thence easterly on, over and along Central Avenue to Lincoln avenue; also commencing at the intersection of Quincy street with Willson avenue, in said city, thence easterly on, over and along Quincy street to Woodland Hills avenue.

Whereas, certain rights and franchises of The Cleveland Electric Railway Company, its successors and assigns, to construct, maintain and operate an electric street railroad on, over and along the streets, avenues and parts thereof hereinafter described, expire by limitation at midnight on the 22nd day of March, 1905; and

Whereas, the city Council of the City of Cleveland, State of Ohio, has the right to renew such rights and franchises at their expiration, to such person or corporation, and upon such terms and conditions as may be considered conducive to the public interests; and

28 Whereas, The Forest City Railway Company has presented and made in writing to the City Council of the City — Cleveland, State of Ohio, an offer to maintain and operate a street railroad on, over and olang the streets avenues and parts thereof hereinafter described, upon terms which are deemed by the Council of the City of Cleveland, State of Ohio, to be conducive to the public interest, and which offer the council of the City of Cleveland, State of Ohio, deems to be the best that can be obtained for a renewal of such grant to carry passengers upon a street railroad on, over and along said streets, avenues and parts thereof hereinafter described; and

Whereas, on the 28th day of December, 1903, the Council of the City of Cleveland passed the following resolution numbered 44257, which was as follows:

"Whereas, an application has been presented to this Council for renewal of certain street railroad grants and privileges by The Forest City Railway Company, and Ordinance No. 44240 introduced in this Council granting to the said The Forest City Railway Company the privileges asked for in their said application; and

Whereas, said Ordinance No. 44240 has been referred to the Committee on Street Railroads, Boards of Public Service, City Solicitor and Mayor; and

Whereas, the chairman of the said street Railroad Committee has fixed Thursday, the 31st. day of December, 1903, at three o'clock p. m. in Room 108 City Hall, as the time and place of the first meeting to consider said application and ordinance; now, therefore,

Resolved, that the city Clerk be and he is hereby directed to transmit to The Cleveland Electric Railway Company a copy of said application, and said ordinance and a copy of this resolution together with an invitation to said The Cleveland Electric Railway Company to be present at said meeting, or any adjournments thereof, to participate in the deliberations of said Committee and to offer any suggestions or propositions that they see fit to make, either to said Committee or to this Council."

Pursuant to the passage of which said resolution Peter Witt, City Clerk, did *not* notify The Cleveland Electric Railway Company of the passage and contents of said resolution, and did receive in reply from The Cleveland Electric Railway Company the following letter:

CLEVELAND, *December* 30, 1903.

Peter Witt, City Clerk, City Hall, Cleveland.

DEAR SIR: We have received your communication of the 29th inst. addressed to The Cleveland Electric Railway Company, in which you enclose copies of resolutions Nos. 44358 and 44257 adopted by the Council December 28th, 1903, and as directed by the Council, extending an invitation to this Company to be present at a meeting of the Committee to which said resolutions have been referred to participate in its deliberations.

We beg to advise the Committee and the City Council that the proposed ordinances to be considered by the Committee, which purports to be ordinances to grant to The Forest City Railway Company the right to operate cars over portions of Woodland Avenue and Central Avenue, in which streets this company is now operat-
29 ing, are ordinances which impair the existing contract rights of this company. We are advised that it is not true, in law or in fact, as recited in said ordinances that the franchises now owned by this company, under which it is operating, expire at the dates recited in said ordinances, but, on the contrary, neither of the franchises under which this company operates in Woodland Avenue and Central Avenue expires for some years to come. The franchises under which this company is operating in said streets are contracts between it and the city of Cleveland which cannot lawfully be impaired by subsequent ordinances of the City, and upon the faith of these contracts this company has invested large sums of money. The Company will not in any way recognize the right of the Council to impair its contract rights in the premises.

There are various other reasons why this proposed legislation could not be legally passed by the Council but we deem it sufficient at this time to call your attention to the fact that you cannot impair our contract rights in the method suggested by these proposed ordinances.

Respectfully submitted,

THE CLEVELAND ELECTRIC RAILWAY COMPANY,

By HORACE E. ANDREWS, *President.*

To which said letter Charles A. Kohl, Chairman of the Committee on Street Railways, did, on the 1st day of January, 1904, reply by letter to the said The Cleveland Electric Railway Company as follows:

JANUARY 1, 1904.

The Cleveland Electric Railway Company, Cleveland, Ohio.

GENTLEMEN: In your letter to the City Clerk, answering the invitations in resolutions Nos. 44257 and 44258 adopted by the city Council of the City of Cleveland, State of Ohio, —— 28, 1903, you say:

"We are advised that it is not true in law or in fact as recited in said ordinances, that the franchises now owned by this Company, under which it is operating, expire at the dates recited in said ordinances, but, on the contrary, neither of the franchises under which this Company operates in Woodland Avenue and Central Avenue expires for some years to come."

The Committee having ordinances Nos. 44239 and 44240 under consideration—composed of the persons indicated in the resolutions before referred to—is anxious to avoid recommending any ordinance that will impair any contract obligations existing between your Company and the City of Cleveland.

The Committee has taken a recess until Monday, the 4th. inst. at 4.00 p. m. when they will again meet at Room 108 City Hall for further deliberation on this subject. The Committee is advised that the grants which ordinances 44239 proposes to renew, expire on the 20th day of September, 1904; and that the grants which ordinance No. 44240 proposes to renew expire on the 22nd. day of March, 1905. Since you claim that the said grants expire at later dates, the Committee hereby requests specific information from you as to the title, date, and particular sections or parts of sections of ordinances or grants upon which you base your claims, and would like very much to have your answer in time to be considered at the committee meeting on Monday afternoon.

The Committee also desires you to have your representatives present at said meeting to present any views or suggestions that you may have to make upon the subject of the ordinances under consideration.

Very truly yours,

CHARLES A. KOHL,
Chairman Committee on St. Railways.

And at a meeting of the Committee to which this ordinance was referred, held on the 4th day of January, 1904, Henry Davies, Esquire, Secretary of The Cleveland Electric Railway Company, was present and stated that Mr. Andrews, president of said Railway Company, was out of the City and that in his absence no one was authorized to speak for him, but no other answer was made by said The Cleveland Electric Railway Company to the letter of said Charles A. Kohl, and

Whereas, all necessary requirements with reference to a renewal of said grant aforesaid have been duly complied with;

Now, therefore, be it ordained by the Council of the City of Cleveland, State of Ohio, that,

SECTION 1. The Council of the City of Cleveland, State of Ohio, hereby renews and grants to The Forest City Railway Company, its successors and assigns, hereinafter called the grantee, the right to maintain and operate a double track street railroad, with the necessary switches, turn-outs, turn-tables, poles, trolleys, feed and span wires, appliances, equipment, etc., and to maintain and operate the same on, over and along the following streets, avenues and parts thereof, commencing at the intersection of Prospect and Erie Streets, in the City of Cleveland, State of Ohio; thence southerly on, over and along Erie Street to Central avenue; thence easterly on, over and along Central avenue to Lincoln avenue; also commencing at the intersection of Quincy Street with Willson avenue, in said city; thence easterly on, over and along Quincy Street to Woodland Hills Avenue.

The rights herein granted in Erie Street are subject to the reserved right of the City of Cleveland to make further grants in said Erie Street with reference to the joint use of the tracks, poles, wires and other appliances and electric currents therein, upon such terms as the city of Cleveland may deem just and equitable.

SEC. 2. The motive power to be used by the said grantee in the maintenance and operation of said railroad shall be electricity. The railroad and its equipment shall be maintained and kept modern and first-class, and to the satisfaction of the Board of Public Service.

SEC. 3. The right is hereby granted to said grantee to erect the necessary poles and wires, and connect the necessary power houses with said street railroad wherever necessary.

SEC. 4. The rate of fare shall be three cents for each passenger carried, and said fare shall entitle the passenger to one continuous ride in the same general direction, and each passenger shall be entitled to one transfer ticket for passage on another line at all points of intersection or connection with other routes operated by
31 the grantee, if such transfer be necessary to enable him to continue to his destination. The City reserves the right to regulate the issuance and use of transfers to carry out this provision, and also reserves the right from time to time to establish transfer points and require the exchange of free transfers at such points between the lines of the grantee hereof and other street railroad companies. Any child under six years of age, accompanied by a person paying fare, shall be carried free.

SEC. 5. The City reserves the right to purchase any street railroad tracks, poles, wires, appliances or equipment owned or used by the grantee on the route herein described, whenever it may have the power to do so, for such price and upon such terms and conditions as may be agreed upon between it and the owner thereof, or upon their failure so to agree, then for such price and upon such terms as may be fixed by a board of arbitration, consisting of three persons, a majority of whom shall decide all questions.

SEC. 6. In case of arbitration in the purchase of said street railroad, the City shall give at least six months' written notice of its

intention so to arbitrate, and shall name therein one arbitrator. The owner shall name in writing within thirty days thereafter, one arbitrator. The two, within thirty days thereafter, shall agree upon the third arbitrator. On the failure on the part of the owner to name one arbitrator, or on the failure of the two arbitrators to name the third, the Probate Judge of Cuyahoga County may name either or both, as the case may be, upon the application of the City. In case of the death or disability of any one of the arbitrators, his place shall be filled in the manner provided for the making of his appointment.

SEC. 7. The value of said street railroad shall be obtained as follows: The cost of reproduction shall be estimated, and from this shall be taken a reasonable amount for depreciation. All the physical property of every nature used in the operation of the railroad shall be included in the valuation. Separate itemized schedules, with values, shall be made under the following titles:

1. Land.
2. Power houses, including buildings and machinery.
3. All buildings except power houses.
4. Tracks.
5. Street pavements to the extent paid for by the grantee.
6. Rolling stock.
7. Miscellaneous.

To this total valuation of the above items shall be added twenty (20) per cent., but in arriving at the said valuation the franchises and privileges granted by the City shall not be estimated or paid for.

SEC. 8. The city reserves the right to decline to take the property at the valuation fixed by arbitration as above provided, but in case of such declination no demand to purchase shall be made by the City within a period of two years thereafter.

32 SEC. 9. The City reserves the right to grant to any other party or parties the joint use of not to exceed ten per cent. of the length of the route herein described, on such terms as may be fixed by the Council in case the parties do not agree; but no such grant shall be made to any party who shall charge a higher rate of fare than the grantee.

SEC. 10. If at the expiration of this franchise no extension or renewal thereof be granted by the city to the then owner, and the City has not itself acquired the property, then any party to whom a franchise may be granted over the within route and any extension thereof, shall have the right, and be under obligations to purchase said railroad under the terms providing for the purchase by the City as herein contained.

SEC. 11. The grantee herein shall make known the true state and condition of the financial affairs of said railroad, and the city Auditor and his authorized agents shall have the right and be afforded the privilege at any and all reasonable times to examine any and all books of account, lists of names of stockholders, showing their respective holdings in said company, and shall be permited to ascertain from said records and books the actual amount or amounts invested, and the amount of capital stock issued, the cost of the property, liabilities, assets, profits and losses, income, expenses, and cost of betterments.

SEC. 12. The maintenance and operation of the street railroad and the enjoyment of the privileges hereby granted, shall be subject to and governed by the general street railway ordinances now in force, except as the same are herein or hereafter modified, and shall be subject to the future ordinances and regulations of the Council.

SEC. 13. In case the said grantee fails to begin the operation of the street railway herein mentioned and decribed on the 23rd day of March, 1905, the Council of the City of Cleveland, State of Ohio, shall thereupon have the right to forfeit the grant herein made, excluding, however, any delays caused by *bona fide* legal proceedings and other unavoidable delays over which the said grantee has no control; but any delay or failure of the grantee to begin the operation of said railroad on the 23rd day of March, 1905, due to any legal proceedings or unavoidable cause preventing the same, and over which the grantee has no control, shall not be deemed by the council ground for forfeiture of this grant.

SEC. 14. The rights herein granted to the grantee are upon the express condition following: The grantee shall pay to the owner of the tracks, poles, wires, and appliances erected in the highways along the route herein described, and constituting a part of the street railroad covered by this grant, the value thereof, to be agreed upon between the grantee and the owner thereof not later than December 22nd, 1904, together with twenty (20) per cent. added to such valuation, provided that such valuation can, at or before December 22nd, 1904, be agreed upon between the said grantee and the said owner, such payment to be made by the grantee on the 22nd day of March, 1905; but if the grantee is unable on or before the 22nd day of December, 1904, to agree with the owner upon such valua-
33 tion, then the grantee shall pay to the owner such sum as shall finally be adjudicated by a court of competent jurisdiction to be the value thereof, the same to be payable at the time such valuation is so adjudicated, and payment in either case to be made by the grantee in cash.

SEC. 15. Whenever in the above ordinance the name of The Forest City Railway Company occurs, or whenever the said The Forest City Railway Company is described herein as the grantee, it shall be held and understood to mean and include the said The Forest City Railway Company, its successors and assigns, as fully as if the same were written out at length in each instance.

SEC. 16. The rights hereby granted shall expire on the 22nd day of March, 1925.

SEC. 17. This ordinance shall take effect and be in force from and after its passage and legal publication, and the acceptance in writing of the terms hereof by said The Forest City Railway Company, its successors or assigns, within ten days after the passage hereof.

Passed Jan. 11/1904.

C. W. LAPP,
President of the Council.

PETER WITT,
City Clerk.

Approved by the Mayor, Jan. 20, 1904.

And said the Forest City Railway Company accepted said ordinance and has given out in the public prints and otherwise that it is now the owner of and has the right beginning on the 22nd day of March, 1905, to operate upon the streets in said ordinance described and which are now occupied by your orator, and to oust your orator from the possession thereof as in said ordinance provided; and, acting in pursuance of the terms of said last mentioned ordinance, the said Forest City Railway Company has made demand upon your orator to agree with it as to the value of the tracks, wires, poles and other appliances now owned by your orator in said streets, to the end that the same may be purchased by The Forest City Railway Company as in said Ordinance provided; and your orator having declined to recognize in any manner the validity of said ordinance or to negotiate with reference to the value of its property as therein provided, The Forest City Railway Company has made formal
34 application in the city council for the assistance of the city authorities in compelling your orator to abide by the provisions of said illegal ordinance. And in and by said formal application said The Forest City Railway Company has asked the city to proceed at the earliest practicable moment to adopt such proceedings as may be necessary to deliver possession to said Forest City Railway Company of the streets and highways described in said ordinance and which are now occupied by your orator, as of right, as in this bill set forth, it is entitled to occupy them until the first day of July, 1914.

XXIX.

Your orator shows that said ordinance of January 11th, 1904, by which it is so sought to oust your orator from the right to continue the operation of its system of railroads upon the streets in said ordinance described is void, because contrary to and in violation of the Constitution of the United States, in this,—that said ordinance is a law of the state of Ohio in direct violation and contravention and impairment of the contract obligations existing between your orator and said defendant City of Cleveland, as in this bill hereinbefore set forth, and impairs the contract rights of your orator in this—that whereas, your orator is entitled, by virtue of its said contracts with said City of Cleveland, to maintain and operate its said railway in all of the streets in said ordinance of January 11th, 1904, described until July, 1914, the provisions of said ordinance oust your orator from the occupation of said streets and attempt to require the turning over of its property upon an agreed valuation to said defendant The Forest City Railway Company on or before the 22nd day of March, 1905.

35 Your orator further shows that the passage of said ordinance of January 11th, 1904, is in furtherance of a combination and conspiracy between said defendant, The Forest City Railway Company, and the municipal authorities of the defendant City of Cleveland, for the avowed purpose, as frequently given out in the public prints by the municipal authorities, of depriving your orator of the right to operate in the streets in said ordinance described unless

it will submit to unreasonable requirements as to rates of fare with reference to its other lines of railway in the city of Cleveland, and with respect to other lines in regard to which it is not even claimed by the defendant city that its rights have terminated or will terminate in the near future; and your orator alleges that, unless restrained by the order of this Court, said The Forest City Railway Company and said City of Cleveland will proceed, in accordance with the provisions of said ordinance, to compel the abandonment by your orator of the operation of its lines of street railway upon the streets in said ordinance described, thereby depriving it of the benefit of its existing contract rights, destroying the unity of its system, and making it impossible to carry out the other existing contracts between it and the city with reference to carrying passengers upon the different lines of railway operated by it and established by the City of Cleveland; that the passage of said illegal ordinance and the contemplated and threatened enforcement of the same have created a cloud upon your orator's title to the right to operate its railways in the City of Cleveland, and have seriously impaired the market value of the obligations of your orator, both stock and bonds, now distributed and outstanding among hundreds of investors; that before it could at law demonstrate the invalidity of said ordinance, a multiplicity of suits would ensue and great inconvenience and conflict and trouble
36 would arise over your orator's refusal to recognize the validity of said ordinance; that said ordinance having already by its terms gone into effect and requiring your orator to take action looking to the fixing of a price upon its property and the turning over of the same to the defendant The Forest City Railway Company, your orator will be compelled to submit to said ordinance or run the risk of the city of Cleveland, by its police force, taking possession of said property and ousting your orator from said streets, and, as your orator is informed and believes and alleges, it is the intention of the city authorities to enforce the terms of said ordinance and put The Forest City Railway Company in possession of said streets and of your orator's property, and oust your orator therefrom by physical force if necessary unless it shall submit to the terms of said illegal ordinance.

Your orator submits that it is without adequate remedy at law in the premises, there being no proceeding known to the law which your orator can, with safety to its investments and the continued and uninterrupted service to the public over its system of railways, and with reasonable promptness, determine the proper construction of the terms of all the contracts hereinbefore in this bill set forth and establish the right, which it here asserts, to continue the operation of said lines until the right so to do is terminated, as in this bill set forth; that only in a court of equity can the rights of your orator, and with justice to it and the public and with reasonable promptness, be adequately adjudicated; that the cloud existing upon your orator's title is a continuing and irreparable and serious damage to it in the management of its property; that the threat of the City of Cleveland to oust it from said important and integral part of its system
37 on the 22nd day of March, 1905, is a menace to its investment which not only in large measure destroys the value of

its securities, but embarrasses your orator with reference to future plans as to the operation of its property by way of improvements and equipment, all of which are contemplated by your orator upon the faith of the validity of the right which it in this bill asserts to the continued operation of said lines of railroad; and your orator submits that it has no adequate remedy at law against the enforcement of said ordinance.

In consideration whereof, and inasmuch as your orator is without adequate remedy at law in the premises, and can have adequate relief only in a court of equity,—to the end—therefore, that the defendants herein may answer the several matters hereinbefore set forth, and that this court may decree that said ordinance of said defendant city entitled

"Ordinance No. 42240.

An ordinance granting to The Forest City Railway Company, its successors and assigns, the renewal right to maintain and operate the existing street railroads in the following streets:"

passed January 11th, 1904, is null and void and of no effect as respects your orator,—

Your orator prays that the city of Cleveland, the Mayor and Common Council of said city, and all officers, agents, attorneys, representatives and departments of said city and their respective agents, representatives and employés, and the city solicitor of said city and his associates, assistants and agents, and their respective successors in office; and the said The Forest City Railway Company, and its officers, agents, servants and employés; be perpetually enjoined, restrained and prohibited from putting said alleged ordinance into effect;

And from instituting or authorizing or directing any suit, action or actions, or any proceeding against your orator, the object
38 or purpose of which or relief sought by said action being to put said alleged ordinance into effect or to enforce any of its provisions, or to compel your orator to cease the operation of its existing lines of road upon the streets in said ordinance mentioned or any of them;

And from in any manner interfering, directly or indirectly, with the continued and peaceable occupancy by your orator of the streets in said ordinance mentioned, for the operation of its lines of street railway therein as now conducted.

And that, upon final hearing, said ordinance may be by decree of this court adjudged to be null and void.

And your orator prays that, in the meantime and during the pendency of this suit, said City of Cleveland and the Mayor and Common Council, and all officers, agents, employés, representatives, and departments of said city, and the said The Forest City Railway Company and its officers, agents, servants and employés, and each of them, be enjoined and restrained as hereinbefore prayed;

And that your orator may have such other and further relief as the nature of the case may require and as to equity may appertain.

May it please Your Honors to grant unto your orator a writ of subpœna, to be issued out of and under the seal of this Honorable Court, directed to the defendants, the City of Cleveland and said The Forest City Railway Company, commanding said defendants to appear in this court at some day certain, to be therein named, and to answer the premises, but not under oath, answer under oath being expressly waived, and abide by and perform such decree as may be rendered herein.

THE CLEVELAND ELECTRIC RAILWAY COMPANY,
By SQUIRE, SANDERS — DEMPSEY,
Solicitors for Complainant.

39 THE STATE OF OHIO, *Cuyahoga County, ss:*

H. J. Davies, being duly sworn, says that he is Secretary of The Cleveland Electric Railway Company, the complainant in the foregoing bill of complaint; that he makes this affidavit as such officer on behalf of said Company; that he has read the said bill of complaint and knows the contents thereof; that the same is true to his own knowledge except as to the matters and things therein stated to be upon information and belief, and, as to those matters, he believes them to be true.

H. J. DAVIES.

Sworn to and subscribed before me this 20th day of March A. D., 1905.

CHARLES C. OWENS,
[SEAL.] *Notary Public.*

(Endorsements:) No. 6851. The Cleveland Electric Railway Company, Plaintiff, *vs.* The City of Cleveland and The Forest City Railway Company, Defendants. Bill of Complaint. Filed Mar. 21, 1905. Irvin Belford, Clerk, U. S. Circuit Court, N. D. O. Squire, Sanders & Dempsey, Cleveland, Ohio.

40 *(Subpœna in Chancery.)*

UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

The President of the United States of America to the Marshal of the Northern District of Ohio, Greeting:

You are hereby commanded to summon The City of Cleveland and The Forest City Railway Company, citizens of and resident in the State of Ohio, if they be found in your District, to be and appear in the Circuit Court of the United States for the Northern District of Ohio, aforesaid, at Cleveland, on the first Monday in June, next, to answer a certain Bill in Chancery filed and exhibited in said Court, against it by The Cleveland Electric Railway Company, a citizen of

and resident in the State of Ohio. Hereof you are not to fail under the penalty of the law thence ensuing. And have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 21st day of March, A. D. 1905, and in the 129th year of the Independence of the United States of America.

[SEAL.] IRVIN BELFORD, *Clerk,*
By B. C. MILLER,
Deputy Clerk.

MEMORANDUM.—The said defendants are required to enter their appearance in this suit in the Clerk's office of said Court on or before the first Monday of May, 1905, otherwise the said bill may be taken *pro confesso.*

IRVIN BELFORD, *Clerk.*

(Endorsements When Issued.)

United States Circuit Court, Northern District of Ohio. No. 6851. The Cleveland Electric Railway Company *vs.* The City of Cleveland *et al.* Subpœna in Chancery. Appearance Day, First Monday in May, 1905, Answer Day, First Monday in June, 1905. Squire, Sanders & Dempsey, Complainant's Attorneys.

41 (Endorsements When Returned.)

THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

U. S. Marshal's Return.

Received this writ at Cleveland, Ohio, March 21, 1905, and on the same day and place, I served the same on the within named The Forest City Railway Company by handing a true and certified copy hereof with all the endorsements thereon to C. H. Miller, Vice President of said Company, the President, chairman of the board of directors or trustees, Secretary or other chief officer could not be found within my district; and on The City of Cleveland, by handing a copy aforesaid to Tom Johnson, Mayor of said city of Cleveland.

F. M. CHANDLER,
U. S. Marshal,
By F. M. FANNING, *Deputy.*

Fees.

Service	$4.00
Travel	.12
	$4.12

Returned and filed Mar. 25, 1905.

IRVIN BELFORD,
Clerk U. S. Circuit Court, N. D. O.

(Stipulation for Costs.)

Circuit Court of the United States, Northern District of Ohio.

No. 6851.

THE CLEVELAND ELECTRIC RY. CO.
vs.
THE CITY OF CLEVELAND ET AL.

It is hereby stipulated and agreed for the benefit of whom it may concern, that the signers hereof shall be and are bound in the sum of Two Hundred & Fifty (250) Dollars, condition- that the complainant above named shall pay all costs that may be awarded against him by this court, or in case of appeal by the appellate court and for which he may be liable, whether due to the United States, its officers, or any other person, within ten days after the same become due and payable.

WM. B. SANDERS.

(Endorsements:) No. 6851. The Cleveland Electric Ry. Co. *vs.* The City of Cleveland, *et al.* Stipulation for costs. Approved and filed M'ch 21, 1905. Irvin Belford, Clerk U. S. Circuit Court, N. D. O.

42 *(Temporary Restraining Order.)*

February Term, A. D. 1905, to wit, March 23, 1905.

Present: Honorable Robert W. Tayler, U. S. District Judge.

No. 6851. Chancery.

THE CLEVELAND ELECTRIC RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY.

This day this cause came on to be heard upon the verified bill of complaint and upon the motion of the complainant for a temporary injunction as prayed for in the bill.

And it is thereupon ordered that the defendants be and appear before this Court on the 8th day of April, 1905, at 10 o'clock A. M. or as soon thereafter as counsel can be heard, and show cause why the motion for a temporary injunction herein made should not be granted.

And in the meantime, and until said motion for a temporary injunction is heard and disposed of upon Complainant giving bond to the approval of the Clerk in the sum of $10,000.00 it is ordered that the defendants and each of them, their officers, agents and em-

ployés, be and they are hereby restrained, as prayed for in the bill of complaint herein, from in any manner seeking to enforce the ordinance in the bill of complaint described as ordinance No. 42240 entitled:

"An Ordinance granting to The Forest City Railway Company, its successors and assigns, the renewal right to maintain and operate the existing street railroads in the following Streets;"

and from in any manner, directly or indirectly, interfering with the continued and peaceable occupancy by the complainant of the streets in said ordinance mentioned for the operation of its lines of street railway therein as now conducted.

43 (*Bond on Temporary Restraining Order.*)

Know all men by these presents, that we, —— ——, are held and firmly bound unto The City of Cleveland and The Forest City Railway Company in the sum of Ten Thousand Dollars to the payment whereof we bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated this 23 day of M'ch *23"* A. D. 1905.

The condition of the above obligation is such that, whereas, the said The Cleveland Electric Railway Company citizen- of the State of Ohio have filed in the Circuit Court of the United States for the Northern District of Ohio a Bill in Chancery against the said The City of Cleveland and The Forest City Railway Company, and have obtained an allowance of an Restraining order, as prayed for in said Bill, from the said Circuit Court.

Now if the said The Cleveland Electric Railway Company shall abide the decision of said Court in said cause, and pay all moneys and costs which shall be adjudged against it in case the said Restraining Order shall be determined, to have been wrongfully issued then these presents shall be void; otherwise to remain in full force.

THE CLEVELAND ELECTRIC RAILWAY CO.,
By SQUIRE, SANDERS & DEMPSEY, *Its Att'ys.*
[SEAL.]
WM. B. SANDERS. [SEAL.]
D. R. HANNA. [SEAL.]

(Endorsements:) U. S. Circuit Court, Northern District of Ohio, No. 6851. The Cleveland Electric Railway Co. *vs.* The City of Cleveland, Ohio. Injunction bond. Approved and filed Mar. 23, 1905. Irvin Belford, Clerk U. S. Circuit Court, N. D. O.

44 (*Certified Copy of Temporary Restraining Order Served.*)

THE UNITED STATES OF AMERICA,
Northern District of Ohio, Eastern Division, ss:

At a stated term of the Circuit Court of the United States, within and for the Eastern Division of the Northern District of Ohio, be-

gun and held at the City of Cleveland, in said District, on the first Tuesday in February, being the 7th day of said month in the year of our Lord one thousand nine hundred and five, and of the Independence of the United States of America, the one hundred and twenty-ninth, to-wit: on Thursday, the 23rd day of March, A. D. 1905—Present: Honorable Robert W. Tayler, United States District Judge—among the proceedings then and there had were the following, to-wit:

No. 6851. Chancery.

THE CLEVELAND ELECTRIC RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY.

This day this cause came on to be heard upon the verified bill of complaint and upon the motion of the complainant for a temporary injunction as prayed for in the bill.

And it is thereupon ordered that the defendants be and appear before this Court on the 8th day of April, 1905, at 10 o'clock A. M. or as soon thereafter as counsel can be heard, and show cause why the motion for a temporary injunction herein should not be granted.

And in the meantime, and until said motion for a temporary injunction is heard and disposed of upon complainant giving bond to the approval of the Clerk in the sum of $10,000.00, it is ordered
that the defendants and each of them, their officers, agents
45 and employés, be and they are hereby restrained, as prayed for in the bill of complaint herein, from in any manner seeking to enforce the ordinance in the bill of complaint described as ordinance No. 42240 entitled:

"An Ordinance granting to The Forest City Railway Company, its successors and assigns, the renewal right to maintain and operate the existing street railroads in the following Streets;"

and from in any manner, directly or indirectly, interfering with the continued and peaceable occupancy by the complainant of the streets in said ordinance mentioned for the operation of its lines of street railway therein as now conducted.

THE UNITED STATES OF AMERICA, *ss:*

I, Irvin Belford, Clerk of the Circuit Court of the United States, within and for the Northern District of the State of Ohio, do hereby certify that I have compared the within and foregoing transcript with the original Temporary Restraining Order entered upon the Journal of the proceedings of said Court in the therein entitled Cause, at the term, and on the day therein named; and do further certify that the same is a true, full and complete transcript and copy thereof.

Witness, my official signature and the seal of said Court, at Cleve-

land, in said District, this 23rd day of March, A. D. 1905, and in the 129th year of the Independence of the United States of America.

[SEAL.] IRVIN BELFORD, *Clerk,*
By THOMAS M. SHERLOCK,
Deputy Clerk.

(Endorsements When Issued.)

No. 6851. United States Circuit Court, Northern District of Ohio, Eastern Division. The Cleveland Electric Railway Company *vs.* The City of Cleveland, and The Forest City Railway Company. Certified copy of Temporary Restraining Order.

(Endorsements When Returned.)

46 THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

U. S. Marshal's Return.

Received this writ at Cleveland, Ohio, March 23, 1905, and on the same date and place I served the same on The City of Cleveland by handing a true and certified copy -hereof with all the endorsements thereon to Tom L. Johnson, Mayor of said city of Cleveland, and on the within named The Forest City Railway Company by handing a copy as aforesaid to C. H. Miller, Vice President of said company, the president, chairman of the board of directors or trustees, secretary or other chief officer could not be found within my district.

F. M. CHANDLER,
U. S. Marshal,
By P. D. SAMPSELL, *Deputy.*

Fees.

Service	$4.00
Travel	.18
	$4.18

Returned and filed Mar. 25, 1905.

IRVIN BELFORD,
Clerk U. S. Circuit Court, N. D. O.

(*Order Continuing Cause.*)

February Term, A. D. 1905, to wit, April 3, 1905.

Present: Honorable Robert W. Tayler, U. S. District Judge.

6851. Chancery.

THE CLEVELAND ELECTRIC RY. CO.
vs.
CITY OF CLEVELAND ET AL.

This cause is continued to the next term of this court.

47 (*Answer of The Forest City Railway Company.*)

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

In Equity. No. 6851.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendants.

Answer of The Forest City Railway Company, one of the defendants in the above entitled cause, to the bill of complaint of The Cleveland Electric Railway Company filed against it and the City of Cleveland in the Circuit Court of the United States for the Northern District of Ohio.

This defendant now and all times hereafter reserving to itself the benefit of all rights of demurrer, and of objection to the said Bill for the many errors and insufficiencies therein, for answer thereto, or so much thereof as this defendant is advised it is material and necessary for it to answer, says:

I.

This defendant admits that the complainant is a corporation organized and existing under the laws of the State of Ohio, and owning and operating various lines of street railway in the City of Cleveland in the said State; also that the City of Cleveland is a municipal corporation under the laws of the State of Ohio; and that this defendant, The Forest City Railway Company, is a corporation organized under the laws of the State of Ohio for the purpose of constructing, maintaining and operating lines of street railway in said City of Cleveland.

48 II.

This defendant admits that this is a civil action and that the amount in *the* controversy, exclusive of interest and costs, exceeds

the sum of Five Thousand Dollars ($5000.00) but denies that this is a controversy arising under the Constitution and laws of the United States, or that the complainant seeks relief against this defendant or the City of Cleveland by reason of an attempt on the part of the defendants, or either of them, to enforce against the complainant a law of the State of Ohio impairing any contract rights of the complainant in violation of any article of the Constitution of the United States.

III.

This defendant admits that Garden street and Ohio street as referred to in the several ordinances mentioned and pleaded in the complainant's bill and otherwise referred to therein were subsequently united under one name, and designated "Central Avenue" by which name the said former Garden street and Ohio street are now known.

IV.

This defendant admits that the complainant is a consolidated Company organized in the year 1893 and that it was formed by the consolidation of certain constituent companies which, at the time of and prior to such consolidation, owned and operated certain street railways in the City of Cleveland, and that by the terms of such consolidation and the force and effect thereof as provided by the statute law of the State of Ohio, the complainant became and is possessed of all the rights, franchises, privileges and property possessed by said constituent companies; but this defendant avers that the said consolidated Company also became and is liable and subject to all the burdens, duties, liabilities and conditions of each of said constituent companies and of the franchises granted to said
49 constituent companies and each of them by the Council of the City of Cleveland.

This defendant also admits that the constituent companies and lines owned and operated by them which were acquired by the complainant by virtue of such consolidation are substantially as set forth in paragraph IV of its bill; but this defendant denies that each of said constituent companies was operating under grants from the City of Cleveland, no one of which expired before the first day of July, 1914.

V.

This defendant also admits that the complainant is the owner by purchase made on or about the first day of July, 1903, of all the lines of railway, rights and franchises then owned by the Cleveland City Railway Company; that the said The Cleveland City Railway Company was a consolidated Company formed by the consolidation of The Woodland Avenue & West Side Street Railway Company and The Cleveland City Cable Railway Company; that at the time of such consolidation which this defendant avers was the 11th day of May, 1893, the said The Woodland Avenue & West Side Street Railroad Company was operating lines of railway described generally as The Woodland Avenue & West Side line, and that The Cleveland

City Cable Railway Company was operating lines from the Public Square out Superior Street to the easterly limits of the City of Cleveland, but denies that none of the grants under which the said The Cleveland City Cable Railway Company was operating expired before January, 1910.

This defendant denies each and every of the other allegations and inferences of fact and law set forth in paragraph V of the complainant's bill.

VI.

This defendant admits that the total mileage of single track which is operated by complainant as the successor in interest of all
50 the various constituent companies mentioned and described in the fourth and fifth paragraphs of its bill is about two hundred and thirty-six (236) miles, and that the said mileage of lines described in the ordinance of the City of Cleveland passed on January 11, 1904, purporting to grant certain rights to this defendant and set forth in paragraph XXVIII of complainant's bill is about twelve (12) miles.

VII.

This defendant denies each and every allegation and inference of fact or law set forth in paragraph VII of the complainant's bill.

VIII.

This defendant admits that of the lines of street railway which the complainant now owns and is operating, the first was constructed by The East Cleveland Railroad Company, a corporation incorporated in the year 1859, and that on November 1, 1859, July 3, 1860, and April 15, 1862, the said The East Cleveland Railroad Company received from the Council of the City of Cleveland grants of permission to construct and operate a line of street railway beginning at the easterly city limits at Willson avenue; thence via Euclid avenue, Case avenue, Prospect street, Erie street and Euclid avenue to and around the southerly and westerly sides of the Public Square to and on Superior street and through Superior street to Water street; that the grants so made were to continue for a period of twenty years from the 20th day of September, 1859, expiring on the 20th day of September, 1879, and that under the grant so made, the lines of street railway therein authorized were afterwards constructed.

This defendant denies each and every other allegation and inference of fact and law set forth in paragraph VIII of the complainant's bill not herein specially admitted to be true.

51 IX.

This defendant admits that on the 9th day of August, 1862, not the 23rd day of July, 1862, as stated in complainant's bill, The East Cleveland Railroad Company received from the Trustees of East Cleveland Township, which Township adjoined the City of Cleveland upon the east and has since become a part of said City, per-

mission to construct and operate a street railroad on Euclid Avenue from its intersection with Willson avenue easterly to Doan's Corners, so-called, now the corner of Euclid avenue and Fairmont street, and that under said grant the line of railway therein authorized was afterwards constructed, connecting at Willson avenue or the easterly limits of the City of Cleveland with the street railway of said Company constructed under the authority of the ordinance mentioned and described in paragraph VIII of the complainant's bill and of this answer.

This defendant admits that the line of street railway constructed under and by virtue of the ordinances of the City of Cleveland and of the right acquired from the Trustees of East Cleveland Township from Water Street to Doan's corners now Euclid Avenue and Fairmount street, as mentioned and described in paragraphs VIII and IX of the complainant's bill and of this answer are referred to in many of the ordinances subsequently passed by the City of Cleveland as the "main line" of The East Cleveland Railroad Company, but this defendant does not admit that the "main line" as used in all of the ordinances means the line aforesaid.

This defendant denies each and every allegation and inference of fact and law, except as herein expressly admitted, set forth in the ninth paragraph of the complainant's bill.

52 X.

This defendant admits that after the said The East Cleveland Railroad Company had constructed and put in operation its line of railway under the ordinances set forth in paragraphs VIII and IX, the Council of the City of Cleveland, on or about the 14th day of January, 1868, passed an ordinance granting consent and leave to the said The East Cleveland Company to construct and operate a line of street railway "from the intersection of Prospect and Brownell streets to connect with the main line of its railroad; thence along the center of said Brownell street to its intersection with Garden street; thence easterly along the center of Garden street to and across Willson avenue to the eastern boundary of said City;" that said permission was given for a period of twenty years from and after the date of the passage of said ordinance expiring January 14, 1888; and that the right during said period of twenty years from the date of said ordinance was also given "to continue to use and occupy the streets, avenues and public grounds over which its main line is now constructed and operated westerly from the junction of said road with the main line to its western terminus."

This defendant denies that by said ordinance the Council of the City of Cleveland granted permission to The East Cleveland Railroad Company to construct said line of street railway as an extension of its existing tracks or lines, or any part thereof; but on the contrary, avers that the grant was made after obtaining the consent in writing of the majority or property owners and after advertising notice of application as required by statute, and to the person that would agree to carry passengers at the lowest rate of fare, as an original grant for a new and separate railway route and line.

This defendant denies each and every other allegation and
53 inference of fact and law not herein expressly admitted to be true as set forth and pleaded in paragraph X of complainant's bill.

XI.

This defendant further admits that after the construction of the street railway on Garden street, pursuant to the ordinance described in paragraph X of the complainant's bill and of this answer, the Council of the Village of East Cleveland which adjoined the City of Cleveland on the east and is now a part of said City, granted to the said The East Cleveland Railroad Company permission "to construct, use and operate a street railroad as a branch of its said railroad through and along the following streets in said Village, to-wit, beginning at the termination of its branch road at the easterly line of the City of Cleveland in Willson avenue; running thence easterly in the center of Garden street to its intersection with the center line of Baden street; thence southerly on said center line to the southerly line of Wade street," and that said grant was to expire in twenty years from the date of said ordinance.

This defendant admits that the aforesaid grant from the Village of East Cleveland was duly accepted by the said The East Cleveland Railroad Company and the line thereby authorized was constructed and put in operation, but this defendant denies that the same was authorized or constructed as an extension of the main line or any line of The East Cleveland Railroad Company; but on the contrary this defendant avers that the same was granted and authorized as an original grant for a new and independent line of street railway.

This defendant denies each and every other allegation or inference of fact or of law not herein expressly admitted to be true as set forth in paragraph XI of complainant's bill.

54 XII.

This defendant is not advised as to the agreement or the contents thereof made between the Village of East Cleveland and The East Cleveland Railroad Company on or about August 7, 1870, described in paragraph XII of the complainant's bill; and, therefore, denies each and every allegation of this paragraph of said bill.

XIII.

This defendant admits that on or about March 25, 1873, the Council of the City of Cleveland passed a resolution which was duly accepted by said Company whereby permission was granted to The East Cleveland Railroad Company "to lay a double track street railroad in Ohio street from their present track in Brownell street to Erie street, and in Erie street from Ohio street to Prospect street to connect with their main track at this point;" that as one of the conditions of said grant of permission, it was provided "that said company shall on completion of said tracks in Erie street and Ohio street take up and remove the present track in Brownell street from

the main track in Prospect street to Ohio street, and shall put that portion of Brownell street so abandoned in as good condition as it was when first occupied by them;" and that the said East Cleveland Railroad Company, by virtue of said authority, did construct a double track street railroad as therein provided, and on the completion thereof, did take up and remove the existing track in Brownell street between Prospect and Ohio streets.

This defendant denies each and every other allegation and inference of fact and law, except as herein expressly admitted to be true as set forth in paragraph XIII of the complainant's bill.

XIV.

This defendant admits that on or about the 23rd day of May, 1876, an ordinance was duly passed by the Council of the
55 City of Cleveland and accepted by The East Cleveland Railroad Company by which said Company was "authorized and empowered to extend the Garden street branch of its road to the easterly end thereof along Garden street to Baden avenue, and along Baden avenue to Quincy street and along Quincy street to New street, and along New street to Garden street, there to connect with the Garden street track and to equip and operate said extension for twenty years in connection with said branch and its main line; but with the express condition that no increase of fare shall be charged by said Company on any part of its said branch or of its main line or of said extension by reason of said extension."

This defendant denies every other allegation or inference of fact and law, except as herein expressly admitted contained in the 14th paragraph of the complainant's bill.

XV.

This defendant admits that on or about September 15, 1879, the Council of the City of Cleveland passed another ordinance entitled, "An ordinance granting a renewal of franchise to The East Cleveland Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the City of Cleveland;" that said ordinance recited that it was passed by authority of an act of the Legislature passed June 12, 1879; that it also recited that The East Cleveland Railroad Company was operating a street railroad in and through certain streets of the City of Cleveland under and by virtue of a grant previously obtained, and had made application in writing for a renewal of such grant for a period of twenty five years from and after the 20th day of September, 1879; and the said ordinance authorized the East Cleveland Railroad Company "to reconstruct, maintain and operate its double track street railroad with the necessary switches, turn-tables and turnouts as heretofore constructed and now maintained and operated in the city of
56 Cleveland commencing on Superior street at the intersection of Water street; thence through Superior to and around the southwest corner of Monumental Square to Euclid avenue; thence through said Avenue to Erie street; thence through Erie street to Prospect street; thence through said Prospect street to Case avenue;

thence through said Case avenue to Euclid avenue; thence through and -long said Euclid avenue to Willson avenue;" and that the right thereby given, it was further provided, shall "be and remain in force for the full period of twenty-five years from the 20th day of September, 1879."

This defendant denies that the Council of the City of Cleveland intended by said ordinance or that on any proper interpretation thereof that the same in legal effect granted to The East Cleveland Railroad Company the right to continue the operation of all its lines of railroad theretofore constructed and in operation in Cleveland or any part hereof other than that explicitly mentioned and described in the ordinance itself; and this defendant denies each and every allegation and inference of fact and law set forth in paragraph XV of complainant's bill, except as herein expressly admitted and pleaded.

XVI.

This defendant further admits that on or about March 22, 1880, another ordinance was passed by the Council of the City of Cleveland, and accepted by said Company; that it was entitled, "an ordinance to permit The East Cleveland Railroad Company to extend the Garden street branch of its railway;" that it authorized and empowered The East Cleveland Railroad Company "to extend the Garden street branch of its railway from the present track at the intersection of Baden avenue and Quincy street in an easterly direction on and along said Quincy street to the intersection of Lincoln avenue, and to equip and operate the said extension and its
57 Garden street branch for the period of twenty-five years from and after the passage of this ordinance."

This defendant denies each and every allegation and inference of fact or of law set forth in paragraph XVI of complainant's bill, except as herein expressly admitted and pleaded.

XVII.

This defendant admits that on or about February 9, 1885, the City Council of the City of Cleveland passed another ordinance which was accepted by said Company entitled: "an ordinance to permit The East Cleveland Railroad Company to extend the Garden street branch of its railway;" that it by said ordinance authorized and empowered The East Cleveland Railroad Company to extend "the Garden street branch of its railway from the termination of its present track at the intersection of Quincy street and Lincoln avenue in an easterly direction on and along said Quincy street to Woodland Hills avenue and equip and operate said extension as a single track railroad with all necessary switches, turnouts and turntables in connection with said branch and its main line and terminating with the grant for the main line."

This defendant avers that the words "said branch" as used by the Council in the language last quoted, means the Garden street branch, and that the words "its main line" means that line of street railway owned by the East Cleveland Railroad Company which was

constructed and operated under and by virtue of the ordinances and grants set forth in paragraphs VIII and IX of the Complainant's bill, and that on the 9th day of February, 1885, when the ordinance above quoted was passed, the termination of the grant from said main line was the 20th day of September in the year 1904; at which time the rights granted by the City of Cleveland on Quincy street east of Lincoln avenue were limited to expire.

This defendant denies each and every allegation and in-
58 ference of fact and law contained in paragraph XVII of the complainant's bill not herein expressly admitted and pleaded.

XVIII.

This defendant admits that on or about June 17, 1887, the Council of the City of Cleveland passed another ordinance entitled "An ordinance to permit the East Cleveland Railroad Company to extend the Garden street branch of its railway," that said ordinance was duly accepted by said Company; that it authorized and empowered said company "to extend the Garden street branch of its railway from the intersection of its present track with Baden avenue upon Garden street in an easterly direction along and upon said Garden street to the easterly line of Lincoln avenue, and equip and operate said extension as a single or double track railroad * * * in connection with said branch and its main line, and terminating with the grant for the Garden street main line."

This defendant avers that the Garden street main line within the meaning of the language of the ordinance as quoted above is the Garden street branch or railway authorized by the ordinance passed July 14, 1868, as set forth in paragraph X of this answer, and as renewed and extended by the ordinance of the City of Cleveland passed on or about the 22nd day of March, 1880, set forth in paragraph XVI of this answer, and that the date fixed by the ordinance last mentioned for the termination of the grant for the Garden street main line is the 22nd day of March, 1905.

This defendant denies each and every allegation and inference of fact and law contained in paragraph XVIII of the complainant's bill, except as herein expressly admitted and pleaded.

XIX.

This defendant admits that on or about July 13, 1888,
59 the Council of the City of Cleveland passed an ordinance granting to The East Cleveland Railroad Company the right to change its motive power upon certain portions of its line from horse power to electric power.

This defendant avers that before said ordinance was passed, application was made to the City of Cleveland by the said The East Cleveland Railroad Company in May, 1888, in which application it is stated by said Company, "that it is willing to afford convenient and rapid transit by the electric system upon the line of its roads on Euclid avenue from Willson avenue to the city limits, and on

Cedar avenue from The Cleveland & Pittsburgh Railroad Company's tracks to a point about 1500 feet easterly from Fairmount street;" and permission was asked for "the right to substitute electric power upon the routes above mentioned;" that the ordinance passed in *pursuance thereof is entitled:* "*An ordinance granting* to The East Cleveland Railroad Company the right to construct and operate an electric railway on Euclid and Cedar avenues;" that said ordinance recites the communication from the Street Railroad Company already set forth, and granted permission to said Company "to propel and operate the cars upon the following named streets in said City, to-wit: Euclid avenue from Willson avenue easterly to the City limits, Cedar avenue from a point near the Cleveland & Pittsburg Railroad Company's right of way in said avenue easterly to a point about 1500 feet east of Fairmount street;" that the privilege thereby granted of constructing the electric system and the operation of its lines, it is provided "is granted in consideration of the improved facilities hereby contemplated and the large expenditure necessary to secure the same, and shall be in force for a period of twenty-five years from and after the date of the passage of this ordinance upon its main and Cedar avenue lines;" and it was further provided by Section VIII thereof that whenever the Council "shall so re-
60 quire the said Company shall use the same system as herein provided on the entire length of their main and Cedar avenue lines."

This defendant further admits that said ordinance was accepted by The East Cleveland Railroad Company; that the portions of its main line and of its Cedar avenue line therein mentioned were equipped with electricity as set forth in said ordinance, and that on the 13th of May, 1889, the Council of the City of Cleveland passed a further resolution pursuant to the authority and right reserved to it in Section VIII of said ordinance by which The East Cleveland Railroad Company was "authorized and required as soon as practicable to extend the use of such motive power over its main and Cedar avenue lines to the westerly termini thereof."

This defendant avers that in compliance with said resolution, the said The East Cleveland Railroad Company did extend the use of electricity over that part of its lines constructed and operated under and by virtue of the ordinances mentioned in paragraph VIII of the complainant's bill and known and designated in said ordinance passed July 13, 1888, and in said resolution adopted May 13, 1889, as its main line.

This defendant denies each and every allegation and inference of fact and law contained in paragraph XIX in complainant's bill, except such as are herein expressly admitted and pleaded.

XX.

This defendant admits that on or about March 10, 1890, the City Council of the City of Cleveland passed another ordinance authorizing The East Cleveland Railroad Company to substitute electrical motive power for horse power upon the Garden street branch of its railway; that said ordinance is entitled: "An ordinance granting

The East Cleveland Railroad Company the right to substitute electric motive power for horse power on its Garden street branch;"
61 that said ordinance authorized said Company "to operate its Garden street branch by electricity, *i. e.*, from the intersection of Prospect and Erie streets, along Erie street to Ohio street, along Ohio street to Brownell street, along Brownell street to Garden street, and along Garden street to Lincoln avenue, also along New street from Garden street to Quincy street, and along Quincy street to Woodland Hills Avenue."

This defendant denies each and every allegation and inference of fact and law contained in paragraph XX of complainant's bill not herein expressly admitted and pleaded.

XXI.

This defendant admits that on or about the 30th day of March, 1891, the Council of the City of Cleveland passed another ordinance which was duly accepted by said The East Cleveland Railroad Company granting the right to said Company to construct and operate a second or additional track upon Central avenue (formerly known as Garden street) from the east line of Willson avenue to the right of way of The Cleveland & Pittsburg Railroad Company, and to connect said tracks so authorized with the tracks then in and upon Central avenue at Willson avenue and at The Cleveland & Pittsburgh Railroad track; that said ordinance provided that it should be accepted by said Company in writing and that such acceptance should be deemed a contract on the part of the said Company with the City to perform all and singular the matters and things required to be performed in said ordinance, and that in and by said ordinance it was further provided, "the right herein granted shall be valid until the expiration of the grants for the said Company's main line."

This defendant admits that said ordinance was accepted in writing by said Company, and the track thereby authorized was con-
62 structed and built, and the distance thereby covered is two thousand four hundred feet.

This defendant avers that the proper interpretation of the words "Company's main line" as used in said ordinance is its Garden street main line to which the track thereby authorized was annexed as an extension, and that the same expires on the 22nd day of March, 1905; but this defendant avers that if the proper interpretation of the words "Company's main line" means the Euclid avenue line authorized and constructed under and by virtue of the ordinances described in paragraphs VIII and IX of complainant's bill, and renewed by the ordinance passed September 15, 1879, and on which said Company was authorized to substitute electricity for animal motive power by the ordinance passed July 13, 1888, and recited in paragraph XIX of the complainant's bill and of this answer, then this defendant avers that it was not within the power of the Council in extending the track of the Garden street branch to fix a different date for the expiration of such extension of track from that fixed in the ordinance making the original grant.

This defendant denies each and every allegation and inference of

fact and law contained in said paragraph XXI of said bill, except as herein expressly admitted and pleaded.

XXII.

This defendant admits that on or about April 20, 1891, the Council of the City of Cleveland passed another ordinance granting to The East Cleveland Railroad Company permission to lay an additional or second track in Quincy street from New street to Woodland Hills avenue, and authorized said Company to connect said tracks with the tracks now laid upon New street.

This defendant admits that said ordinance contained a provision as follows: "The right herein granted shall be valid until the
63 expiration of the grants for said Company's tracks on said Quincy street east of Lincoln avenue, to-wit: July 13, 1913." But this defendant avers that the grants for said Company's tracks on said Quincy street east of Lincoln avenue are contained in the ordinance passed February 9, 1885, recited in paragraph XVII of complainant's bill and of this answer, and by the terms of which the rights thereby granted expired on the 20th day of September, 1904, and this defendant avers that the correct date for the expiration of the grants for said Company's tracks on Quincy street east of Lincoln avenue does, in law, control the erroneous recital thereof.

This defendant denies each and every allegation of fact and law contained in paragraph XXII not herein expressly admitted and pleaded.

XXIII.

This defendant admits that on or about the 17th day of July, 1893, the Council of the City of Cleveland passed an ordinance granting to The Cleveland Electric Railway Company, the successor to The East Cleveland Railway Company, permission to extend and operate its double track street railroad in Prospect street from Erie to Ontario street, and also to extend its tracks from the present tracks at the intersection of Superior and Seneca streets; thence along Seneca street to Lake street; and thence along Lake street to Ontario street; and thence along Ontario street to the center of Monumental Park connecting with the present tracks in Ontario street; and also to construct and operate the same by electricity, and that the right thereby granted on said streets shall be in force until the 13th day of July, 1913.

This defendant admits that among other conditions in said ordinance, it was provided that the Company should comply with and perform all the terms and conditions of the resolution adopted by the City Council on the 29th of May, 1893, in reference to the consolidation of the various companies forming the complain-
64 ant; that it was also provided that the Council should have the right at any time to require the Company to operate its cars over the entire length of any of the lines or extensions of said constituent companies in the same manner and between the same termini as cars were operated prior to the consolidation of said constituent companies, and that the Council might require night cars

to be operated the entire length of each of the lines of the Company at least hourly each way between midnight and six o'clock a. m., and that these provisions should apply to and be a condition on each and all the grants made by the Council of said constituent companies or either of them.

This defendant admits that by said ordinance the Company was required to sprinkle between the outer rails of its track including the space commonly known as the "Devil strip" on all streets and street intersections wherein any tracks or any of the lines of said Company are laid in a manner satisfactory to said Director, but this defendant denies that this requirement of any of the other requirements of said ordinance pleaded in paragraph XXIII of complainant's bill and admitted in this answer were new conditions and burdens imposed by said ordinance on said complainant.

This defendant denies that any portion of the streets on which The Cleveland Electric Railway Company was authorized to extend its double street railroad had been originally constructed as a part of the Garden street railway or branch, and denies also that said ordinance was passed with special reference to the running of cars operated upon the Garden street branch or that immediately upon the completion and equipment of said tracks for operation, the Council of said city required all cars operated upon said Garden street branch to be operated upon the tracks provided for by said ordinance.

This defendant denies each and every allegation and in-
65 ference of fact and law contained in paragraph XXIII of complainant's bill not herein expressly admitted and pleaded.

XXIV.

This defendant further admits that on February 19, 1894, the Council of the city of Cleveland passed an ordinance entitled: "An ordinance granting permission to The Cleveland Electric Railway Company, and The Cleveland City Railway Company to extend their tracks in Willson avenue," and that said ordinance was duly accepted by both of said companies; that by said ordinance, The Cleveland Electric Railway Company was granted permission to extend its double track street railroad on and along Willson avenue from its present tracks at the intersection of Scovill and Willson avenues to its present tracks at the intersection of Perkins and Willson avenues, and from its present tracks at the intersection of Hough and Willson avenues to the northerly terminus of said Willson avenue; that permission was granted The Cleveland City Railway Company to extend its double track street railroad on and along said Willson avenue from its present tracks at the intersection of Woodland and Willson avenues to its present tracks at the intersection of Lexington and Willson avenues, and from its present tracks at the intersection of Payne and Willson avenues to the northerly terminus of said Willson avenue, that such extensions were to be constructed, maintained and operated in connection with the existing tracks in said Willson avenue as a double track street railroad with electricity as a motive power. This defendant further admits that in and by Section V of said ordinance, it was provided that the operation of

cars on said Willson avenue by The Cleveland City Railway Company and the complainant should be under the control and regulation of the Council, and that Section VI of said ordinance provide as follows: "A passenger on any car operated on any part of said Willson avenue, on the payment of one fare, either in
66 cash or by ticket, shall be entitled without additional or extra carge, to be transferred to any other line of either of said companies intersecting or coming to said Willson avenue, including the lines on Broadway, and to have a continuous ride thereon, with the right, without additional or extra charge, to be transferred from such second line to a car on any other line of the company operating the same which crosses the Cuyahoga River, and passengers on any line of either of said companies intersecting or coming to said Willson avenue, including the lines on Broadway, shall be entitled, without additional or extra charge, to be transferred to said Willson avenue line and to have a continuous ride thereon."

This defendant further admits that Section VII of said ordinance requires the paving of the tracks and the space between the tracks and one foot outside of each rail on said Willson avenue, and that the two companies were required to widen the roadway of said Willson avenue between Euclid avenue and Scovill avenue five feet on each side, and that Section X of said ordinance provided that the grant thereby made should be in force until the first day of July, 1914.

This defendant denies each and every allegation and inference of fact and law contained in paragraph XXIV of complainant's bill except such as are herein expressly admitted and pleaded.

XXV.

This defendant admits that on or about June 25, 1894, the Council of the City of Cleveland passed an ordinance which was duly accepted by said Company granting to the complainant the right to extend and operate its double track street railroad in Quincy street from New street to Willson avenue, and to operate the same by electricity; that the double track street railway which, at the time of the passage of said ordinance, and being operated
67 in Quincy street and is therein referred to, was the Garden street branch of the East Cleveland Railroad Company; and which had been constructed and operated under the various ordinances herein referred to, and that the grant thereby made, it was expressly provided, shall terminate with the grant for said Company's present line in Quincy street, the date for the expiration of which is fixed by the ordinance as set forth in paragraph XVII of this answer.

This defendant denies each and every allegation and inference of fact and law contained in paragraph XXV of complainant's bill except such as are herein expressly admitted and pleased.

XXVI.

This defendant admits that on the 29th day of May, 1893, the Council of the City of Cleveland passed a resolution consenting to

the consolidation which had previously taken place of The East Cleveland Railroad Company, The Broadway & Newberg Railroad Company, The Brooklyn Street Railroad Company and the Southside Street Railroad Company, making the complainant, The Cleveland Electric Railway Company.

This defendant avers that before the passage of said ordinance, The Cleveland Electric Railway Company addressed to the said Council a communication which is in words and figures following:

"CLEVELAND, OHIO, *May* 22, 1893.

To the Honorable City Council of the City of Cleveland.

GENTLEMEN: The Cleveland Electric Railway Company was organized on the 25th day of March, by the consolidation of the East Cleveland Railroad Company and the Broadway and Newburg Street Railway Company. Subsequently it was further enlarged by consolidation on the 24th day of April, 1893, with it of the Brooklyn Street Railroad Company and the South Side Street Railroad Company. These two consolidations were made under advise
68 of counsel, and believed by the officers and stockholders of the respective companies to be legal and valid in all respects. Inasmuch as some question seems to have arisen as to the intention of the Cleveland Electric Railroad Company, the company desires to state to you officially that it does not claim any rights greater than the constituent companies forming the organization; that it intends to obey all ordinances to which each and all of the constituent companies were subject, that it has, since such consolidation has been effected, issued transfer checks to all persons desiring them, to enable such persons to have a continuous ride from any East Side line to any South or West Side line, and from any South or West Side line of the company to any East Side line, for one fare, and will continue such system of transfers where it cannot better accommodate its patrons by such through lines as it may establish; that it disclaims all intention of charging more than one fare for any such continuous ride; and that its aim has been, and will be, to give its patrons vastly improved service and accommodations by reason of such consolidation.

Very respectfully,

THE CLEVELAND ELECTRIC RAILWAY COMPANY,
By HORACE E. ANDREWS, *Vice-Pres.*"

This defendant avers that the resolution passed by the Council consenting to said consolidation is in words and figures following, to-wit:

"Resolved, That the Council hereby consents to the consolidation of the East Cleveland Railroad Company, The Broadway & Newburg Street Railroad Company, the Brooklyn Street Railroad Company and the South Side Street Railroad Company under the name of the Cleveland Electric Railway Company, under the following terms and conditions:—

That only one fare shall be charged for a continuous ride on or

over any line of railway formerly owned by any other of said
69 constituent companies and any line of any other of said constituent companies within the limits of the city of Cleveland; and passengers on any of such lines paying one fare shall be entitled, without extra or additional charge, to be transferred to any other of said lines and have a continuous ride thereon for said single fare. The said The Cleveland Electric Railway Company shall within ten days after the adoption of this resolution, file with the City Clerk, in writing, an acceptance of the terms and conditions herein and an agreement to perform the same; otherwise this resolution shall be null and void."

This defendant admits that after the passage of said resolution, the complainant accepted the same in writing, but it denies each and every allegation and inference of fact and law contained in said paragraph XXVI of the complainant's bill not herein expressly admitted to be true.

XXVII.

This defendant admits that on or about the first day of July, 1903, the complainant acquired by purchase all of the companies forming the consolidated company known as The Cleveland City Railway Company, but it denies each and every other allegation or inference of fact and law contained in paragraph XXVII of the complainant's bill not herein expressly admitted to be true.

XXVIII.

This defendant admits that the Council of the City of Cleveland on the 11th day of January, 1904, passed an ordinance which is in the words and figures as set forth in paragraph XXVIII of the complainant's bill; that this defendant accepted said ordinance, and that it claims that it is now the owner of and has the right beginning from the 22nd day of March, 1905, to operate upon the streets described in said ordinance, and which are now occupied by the com-
plainant, and to oust the complainant from the possession
70 thereof; also that acting in pursuance of the terms of said ordinance, this defendant has made demand upon the complainant to agree with it as to the value of the tracks, wires, poles and other appliances in said streets to the end that the same may be purchased by the defendant and paid for as provided in said ordinance; also that the complainant has declined to negotiate with reference to the value of its property as therein described or to vacate the streets at the expiration of its franchises therefor; and that this defendant has made formal application to the Council of the City in which it has asked that the City proceed at the earliest practicable moment to have the value of said tracks, poles wires and appliances erected in the highways along the routes described in the ordinance adjudicated by some Court, and also to adopt such proceedings as may be necessary to deliver possession of said streets and highways to this defendant.

This defendant denies all the other allegations and inferences of fact and law contained in paragraph XXVIII of complainant's bill, except such as are herein expressly admitted to be true.

XXIX.

This defendant denies that said ordinance of January 11, 1904, is void because contrary to and in violation of the Constitution of the United States in that it is a law of the State of Ohio impairing any contract obligation existing between the complainant and the City of Cleveland, or that the complainant has any contract with respect to the streets covered by said ordinance which continues in force until July 1914, or to any date subsequent to the 22nd day of March, 1905.

This defendant denies that the passage of said ordinance of January 11, 1904, is, on the part of this defendant in furtherance of any combination or conspiracy with the municipal authori-
71 ties of the City of Cleveland, or any one else, for the purpose of depriving the complainant of its right to operate in the streets described in said ordinance unless it will submit to unreasonable requirements as to its rates of fare on its other lines of railway in the City of Cleveland; but this defendant avers that it has applied for and obtained said ordinance in good faith and as soon as it lawfully can obtain possession of said routes, expects to maintain and operate its system of street railway thereon according to the terms and conditions of said ordinance.

This defendant admits that in accordance with the provision of said ordinance, it will use all lawful means to obtain possession of the rights granted to it by said ordinance, and will maintain and operate the lines of street railway upon the streets described therein; but it denies that so doing will deprive the complainant of the benefit of any existing contract rights or that it will make it impossible for the complainant to carry out other existing contracts with the city according to the true intent and effect thereof. It also denies that before the complainant could at law contest the validity of said ordinance, a multiplicity of suits would ensue and great inconvenience and conflict and trouble would arise over the complainant's refusal to recognize the validity of said ordinance, or that by reason of anything alleged in complainant's bill, it is without adequate remedy at law.

This defendant also denies all of the allegations and inference- of fact and law contained in paragraph XXIX of the complainant's bill not herein expressly admitted to be true.

And now having fully answered the complainant's bill of complaint, this defendant prays to be hence dismissed with its reasonable costs in this behalf expended.

[CORPORATE SEAL.]

THE FOREST CITY RAILWAY COMPANY,
By M. A. FANNING, *Pres't.*

GARFIELD, HOWE & WESTENHAVER, *Counsel.*

72 STATE OF OHIO, *Cuyahoga County, ss:*

M. A. Fanning being first duly sworn deposes and says that he is the President of the defendant Company, The Forest City Rail-

way Company, and that the facts and allegations contained in the foregoing answer are true as he verily believes.

[NOTARIAL SEAL.] M. J. RUDOLPH,
Notary Public.

(Endorsements:) No. 6851. U. S. Cir. Ct. North. Dist. of Ohio, Eastern Division. The Cleveland Electric Railway Company, Complainant, *vs.* The City of Cleveland and The Forest City Railway Company, Defendant. Answer of the Forest City Railway Co. Filed Apr. 7, 1905. Irvin Belford, Clerk U. S. Circuit Court, N. D. O. Garfield, Howe & Westenhaver, Cleveland, O. Attorneys for Forest City Ry. Co.

73 (*Answer of the City of Cleveland.*)

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

No. 6851. In Equity.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendants.

Answer of the city of Cleveland, one of the defendants in the above entitled cause, to the Bill of Complaint of The Cleveland Electric Railway Company, filed against it and The Forest City Railway Company, in the Circuit Court of the United States for the Northern District of Ohio.

This defendant, now and at all times hereafter reserving to itself the benefit of all rights of demurrer and of objection to the bill filed herein for the many errors and insufficiencies therein, for answer thereto and to so much thereof as this defendant is advised it is material and necessary for it to answer, answering says:

I. This defendant admits that the complainant is a corporation organized and existing under the laws of the State of Ohio, and owning and operating various lines of street railway in the City of Cleveland in the said state; that the Forest City Railway Company is a corporation organized under the laws of the State of Ohio for the purpose of constructing, maintaining and operating lines of street railway in said city, and that the City of Cleveland this defendant, is a municipal corporation under the laws of the State of Ohio.

II. This defendant admits that this is a civil action and that the amount in controversy, exclusive of interest and costs, exceeds
74 the sum of Five Thousand Dollars ($5,000.00), but denies that this is a controversy arising under the constitution of the United States, or that the complainant seeks relief against this defendant, or The Forest City Railway Company by reason of an

attempt on the part of the defendants, or either of them, to enforce against the complainant a law of the State of Ohio impairing the obligation of any contract of the complainant in violation of any article of the constitution of the United States.

III. This defendant admits that Garden Street and Ohio Street, as referred to in the several ordinances mentioned and pleaded in complainant's bill, and otherwise referred to therein, were subsequently united under one name and designated Central Avenue, by which name the said former Garden Street and Ohio Street are now known.

IV. This defendant admits that the complainant is a consolidated company, organized in the year 1893, and that it was formed by the consolidation of certain constituent companies, which at the time of and prior to such consolidation, owned and operated street railways in the City of Cleveland, and that by the terms of such consolidation, and the force and effect thereof, as provided by law, the complainant became and is possessed of all the rights, privileges, franchises and property possessed by said constituent companies; but this defendant avers that the said consolidated company also became and is liable, and subject to all the burdens, debts, liabilities and conditions of each of said constituent companies, and of the franchises granted to said constituent companies and each of them, by the Council of the City of Cleveland.

This defendant also admits that the constituent companies and lines owned and operated by them which were acquired by the complainant by virtue of such consolidation, are substantially as
75 set forth in paragraph IV of the complainant's bill, but this defendant denies that each of said constituent companies was operating under grants from the City of Cleveland authorizing the continued operation of said roads for a period of years, no one of which grants expired before the 1st day of July, 1914.

V. This defendant also admits that the complainant is the owner by purchase made on or about the first day of July, 1903, of all the lines of railway, rights, and franchises then owned by the Cleveland City Railway Company; that the said The Cleveland City Railway Company was a consolidated company formed by the consolidation of The Woodland Avenue and West Side Street Railway Company and The Cleveland City Cable Railway Company; that at the time of such consolidation which this defendant avers was the 11th day of May, 1893, the said The Woodland Avenue and West Side Street Railroad Company was operating lines of railway described generally as The Woodland Avenue and West Side line, and that The Cleveland City Cable Railway Company was operating lines from the Public Square out Superior Street to the easterly limits of the City of Cleveland, but denies that none of the grants under which the said The Cleveland City Cable Railway Company was operating expired before January, 1910.

This defendant denies each and every of the other allegations and inferences of fact and law set forth in paragraph V of the complainant's bill.

VI. This defendant admits that the total mileage of single track

which is operated by complainant as the successor in interest of all the various constituent companies mentioned and described in the fourth and fifth paragraphs of its bill is about two hundred and thirty-six (236) miles, and that the said mileage of lines described in the ordinance of the City of Cleveland passed on January 11, 1904, purporting to grant certain rights to The Forest City Railway Company, and set forth in paragraph XXVIII of complain-
76 ant's bill is about twelve (12) miles.

VII. This defendant denies each and every allegation and inference of fact or law set forth in paragraph VII of the complainant's bill.

VIII. This defendant admits that of the lines of street railway which the complainant now owns and is operating, the first was constructed by The East Cleveland Railroad Company, a corporation incorporated in the year 1859, and that on November 1, 1859, July 3, 1860 and April 15, 1862, the said The East Cleveland Railroad Company received from the Council of the City of Cleveland grants of permission to construct and operate a line of street railway beginning at the easterly city limits at Willson Avenue; thence via Euclid Avenue, Case Avenue, Prospect Street, Erie Street and Euclid Avenue to and around the southerly and westerly sides of the Public Square to and on Superior Street and through Superior Street to Water Street; that the grants so made were to continue for a period of twenty years from the 20th day of September, 1859, expiring on the 20th day of September, 1879, and that under the grant so made, the lines of street railway therein authorized were afterwards constructed.

This defendant denies each and every other allegation and inference of fact and law set forth in paragraph VIII of the complainant's bill not herein specially admitted to be true.

IX. This defendant admits that on the 9th day of August, 1862, not the 23rd day of July, 1862, as stated in complainant's bill, The East Cleveland Railroad Company received from the Trustees of East Cleveland Township, which Township adjoined the City of Cleveland upon the east and has since become a part of said City, permission to construct and operate a street railroad on Euclid Avenue from its intersection with Willson Avenue easterly to Doan's Corners,
77 so-called, now the corner of Euclid Avenue and Fairmount Street, and that under said grant the line of railway therein authorized was afterwards constructed connecting at Willson Avenue or the easterly limits of the City of Cleveland with the street railway of said Company constructed under the authority of the ordinance mentioned and described in paragraph VIII of the complainant's bill and of this answer.

This defendant admits that the line of street railway constructed under and by virtue of the ordinances of this defendant and of the right acquired from the trustees of East Cleveland Township from Water Street to Doan's corner, now Euclid Avenue and Fairmount Street, as mentioned and described in paragraphs VIII and IX of the complainant's bill and of this answer are referred to in many of the ordinances subsequently enacted by this defendant as the "main line" of The East Cleveland Railroad Company, but this

defendant does not admit that the "main line" as used in all of the ordinances means the line aforesaid.

This defendant denies each and every allegation and inference of fact and law, except as herein expressly admitted, set forth in the ninth paragraph of the complainant's bill.

X. This defendant admits that after the said The East Cleveland Railroad Company had constructed and put in operation its line of railway under the ordinances set forth in paragraphs VIII and IX, the Council of this defendant, on or about the 14th day of January, 1868, passed an ordinance granting consent and leave to the said The East Cleveland Railroad Company to construct and operate a line of street railway "from the intersection of Prospect and Brownell Streets to connect with the main line of its railroad; thence along the center of said Brownell Street to its intersection with
78 Garden Street; thence easterly along the center of Garden Street to and across Willson Avenue to the eastern boundary of said City;" that said permission was given for a period of twenty years from and after the date [illegible] passage of said ordinance expiring January 14, 1888; and [illegible] right during said period of twenty years from the date o[illegible]dinance was also given "to continue to use and occupy the str[illegible] avenues and public grounds over which its main line is now constructed and operated westerly from the junction of said road with the main line to its western terminus."

This defendant denies that by said ordinance the Council of this defendant granted permission to The East Cleveland Railroad Company to construct said line of street railway as an extension of its existing tracks or lines, or any part thereof; but on the contrary, avers that the grant was made after obtaining and producing to the Council of this defendant, the consent in writing of the majority of property owners and after advertising notice of application as required by statute, and to the person that would agree to carry passengers at the lowest rate of fare, as an original grant for a new and separate railway route and line.

This defendant denies each and every other allegation and inference of law and fact not herein expressly admitted to be true as set forth and pleaded in paragraph X of complainant's bill.

XI. This defendant further admits that after the construction of the street railway on Garden Street, pursuant to the ordinance described in paragraph X of the complainant's bill and of this answer, the Council of the Village of East Cleveland which adjoined this defendant on the east and is now a part of this defendant, granted to the said The East Cleveland Railroad Company permission "to construct, use and operate a street railroad as a branch of its said railroad through and along the following streets in
79 said Village, to-wit: beginning at the termination of its branch road at the easterly line of the City of Cleveland in Willson Avenue; running thence easterly in the center of Garden Street to its intersection with the center line of Baden Street; thence southerly on said center line to the southerly line of Wade Street," and that said grant was to expire in twenty years from the date of said ordinance.

This defendant admits that the aforesaid grant from the Village of East Cleveland was duly accepted by the said The East Cleveland Railroad Company and the line thereby authorized was constructed and put in operation, but this defendant denies that the same was authorized or constructed as an extension of the main line or any line of The East Cleveland Railroad Company; but on the contrary this defendant avers that the same was granted and authorized as an original grant for a new and independent line of street railway.

This defendant denies each and every other allegation or inference of fact or of law not herein expressly admitted to be true as set forth in paragraph XI of complainant's bill.

XII. This defendant admits that on or about the 2nd day of August, 1870, the Village of East Cleveland made an agreement with The East Cleveland Railroad Company by which the tracks of the latter were removed from the southerly side of Euclid Avenue in said Village to the center of said avenue, and that in said agreement it is recited that said tracks "have been constructed and operated upon the southerly side of the carriageway of said Euclid Avenue, and being an extension or branch of its main road located in the City of Cleveland."

XIII. This defendant admits that on or about March 25, 1873, the Council of this defendant passed a resolution which was duly accepted by said Company whereby permission was granted
80 to The East Cleveland Railroad Company to "lay a double track street railroad in Ohio Street from their present track in Brownell Street to Erie Street, and in Erie Street from Ohio Street to Prospect Street to connect with their main track at this point;" that as one of the conditions of said grant of permission, it was provided "that said company shall on completion of said tracks in Erie Street and Ohio Street take up and remove the present track in Brownell Street from the main track in Prospect Street to Ohio Street, and shall put that portion of Brownell Street so abandoned in as good conditon as it was when first occupied by them;" and that the said East Cleveland Railroad Company, by virtue of said authority, did construct a double track street railroad as therein provided, and on the completion thereof, did take up and remove the existing track in Brownell Street between Prospect and Ohio Streets.

This defendant denies each and every other allegation and inference of fact and law, except as herein expressly admitted to be true, as set forth in paragraph XIII of the complainant's bill.

XIV. This defendant admits that on or about the 23rd day of May, 1876, an ordinance was duly passed by the Council of this defendant and accepted by The East Cleveland Railroad Company by which said Company was "authorized and empowered to extend the Garden Street branch of its road to the easterly end thereof along Garden Street to Baden Avenue, and along Baden Avenue to Quincy Street and along Quincy Street to New Street, and along New Street to Garden Street, there to connect with the Garden Street track and to equip and operate said extension for twenty
81 years in connection with said branch and its main line; but with the express condition that no increase of fare shall be

charged by said Company on any part of its said branch or of its main line or of said extension by reason of said extension."

This defendant denies every other allegation or inference of fact and law, except as herein expressly admitted contained in the 14th paragraph of the complainant's bill.

XV. This defendant admits that on or about September 15, 1879, the Council of this defendant passed another ordinance entitled, "An ordinance granting a renewal of franchise to The East Cleveland Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the City of Cleveland"; that said ordinance recited that it was passed by authority of an act of the Legislature passed June 12, 1879; that it also recited that The East Cleveland Railroad Company was operating a street railroad in and through certain streets of the City of Cleveland under and by virtue of a grant previously obtained, and had made application in writing for a renewal of such grant for a period of twenty-five years from and after the 20th day of September, 1879, and the said ordinance authorized the East Cleveland Railroad Company "to re-
82 construct, maintain and operate its double track street railroad with the necessary switches, turn-tables and turnouts as heretofore constructed and now maintained and operated in the City of Cleveland commencing on Superior Street at the intersection of Water Street; thence through Superior to and around the southwest corner of Monumental Square to Euclid Avenue; thence through said Avenue to Erie Street; thence through Erie Street to Case Avenue; thence through said Case Avenue to Euclid Avenue; thence through and along said Euclid Avenue to Willson Avenue"; and that the right thereby given, it was further provided, shall "be and remain in force for the full period of twenty-five years from the 20th day of September, 1879."

This defendant denies that its Council intended by said ordinance, or that on any proper interpretation thereof, that the same in legal effect granted to The East Cleveland Railroad Company the right to continue the operation of all its lines of railroad theretofore constructed and in operation in Cleveland or any part thereof other than that explicitly mentioned and described in the ordinance itself; and this defendant denies each and every allegation and inference of fact and law set forth in paragraph XV of complainant's bill, except as herein expressly admitted and pleaded.

XVI. This defendant further admits that on or about March 22, 1880, another ordinance was passed by the Council of this defendant and accepted by said Company; that it was entitled "An ordinance to permit The East Cleveland Railroad Company to extend the Garden Street branch of its railway"; that it authorized and empowered The East Cleveland Railroad Company "to extend the Garden Street branch of its railway from the present track at the intersection of Baden Avenue and Quincy Street in an easterly direction on and
83 along said Quincy Street to the intersection of Lincoln Avenue, and to equip and operate the said extension and its Garden Street branch for the period of twenty-five years from and after the passage of this ordinance."

This defendant denies each and every allegation and inference of fact or of law set forth in paragraph XVI of complainant's bill, except as herein expressly admitted and pleaded.

XVII. This defendant admits that on or about February 9, 1885, the City Council of this defendant passed another ordinance, which was accepted by said company, entitled: "An ordinance to permit The East Cleveland Railroad Company to extend the Garden Street branch of its railway"; that it by said ordinance authorized and empowered The East Cleveland Railroad Company to extend "the Garden Street branch of its railway from the termination of its present track at the intersection of Quincy Street and Lincoln Avenue in an asterly direction on and along said Quincy Street to Woodland Hills Avenue, and equip and operate said extension as a single track railroad with all necessary switches, turnouts, and turntables in connection with said branch and its main line, and terminating with the grant for the main line."

This defendant avers that the words "said branch" as used by its Council in the langauge last quoted, means the Garden Street branch, and that the words "its main line" means that line of street railway owned by the East Cleveland Railroad Company which was constructed and operated under and by virtue of the ordinances and grants set forth in paragraphs VIII and IX of the complanant's bill, and that on the 9th day of February, 1885, when the ordinance above quoted was passed, the termination of the grant for said main line was the 20th day of September in the year 1904; at which time the rights granted by this defendant on Quincy Street east of Lincoln Avenue were limited to expire.

84 This defendant denies each and every allegation and inference of fact and law contained in paragraph XVII of the complainant's bill not herein expressly admitted and pleaded.

XVIII. This defendant admits that on or about June 17, 1887, its Council passed another ordinance entitled: "An ordinance to permit the East Cleveland Railroad Company to extend the Garden Street branch of its railway;" that said ordinance was duly accepted by said company; that it authorized and empowered said company "to extend the Garden Street branch of its railway from the intersection of its present track with Baden Avenue upon Garden Street in an easterly direction along and upon said Garden Street to the easterly line of Lincoln Avenue, and equip and operate said extension as a single or double track railroad * * * in connection with said branch and its main line, and terminating with the grant for the Garden Street main line."

This defendant avers that the Garden Street main line within the meaning of the language of the ordinance as quoted above is the Garden street branch or railway authorized by the ordinance passed July 14, 1868, as set forth in paragraph X of this answer, and as renewed and extended by the ordinance of this defendant passed on or about the 22nd day of March, 1880, set forth in paragraph XVI of this answer, and that the date fixed by the ordinance last mentioned for the termination of the grant for the Garden Street main line is the 22nd day of March, 1905.

This defendant denies each and every allegation and inference of fact and law contained in paragraph XVIII of the complainant's bill, except as herein expressly admitted and pleaded.

XIX. This defendant admits that on or about July 13, 1888, its Council passed an ordinance granting to The East Cleveland Railroad Company the right to change its motive power upon cer-
85 tain portions of its line from horse power to electric power.

This defendant avers that before said ordinance was passed, application was made to this defendant by the said The East Cleveland Railroad Company in May, 1888, in which application it is stated by said Company, "that it is willing to afford convenient and rapid transit by the electric system upon the line of its roads on Euclid Avenue from Willson Avenue to the city limits, and on Cedar Avenue from The Cleveland and Pittsburg Railroad Company's tracks to a point about 1500 feet easterly from Fairmount Street;" and permission was asked for "the right to substitute electric power upon the routes above mentioned;" that the ordinance passed in pursuance thereof is entitled: "An ordinance granting to The East Cleveland Railroad Company the right to construct and operate an electric street railway on Euclid and Cedar Avenues;" that said ordinance recites the communication from the street railroad company already set forth, and granted permission to said company "to propel and operate the cars upon the following named streets in said City, to-wit: Euclid Avenue from Willson Avenue easterly to the City limits, Cedar Avenue from a point near The Cleveland and Pittsburg Railroad Company's right of way in said avenue easterly to a point about 1500 feet east of Fairmount Street;" that the privilege thereby granted of constructing the electric system and the operation of its lines, it is provided "is granted in consideration of the improved facilities hereby contemplated and the large expenditure necessary to secure the same, and shall be in force for a period of twenty-five years from and after the date of the passage of this ordinance upon its main and Cedar Avenue lines;" and it was further provided by section VIII that whenever the Council "shall so require, the said Company shall use the same system
86 as herein provided on the entire length of their main and Cedar Avenue lines."

This defendant further admits that said ordinance was accepted by The East Cleveland Railroad Company; that the portions of its main line and of its Cedar Avenue line therein mentioned were equipped with electricity as set forth in said ordinance, and that on the 13th of May, 1889, the Council of the City of Cleveland passed a further resolution pursuant to the authority and right reserved to it in Section VIII of said ordinance by which The East Cleveland Railroad Company was "Authorized and required as soon as practicable to extend the use of such motive power over its main and Cedar Avenue lines to the westerly termini thereof."

This defendant avers that in compliance with said resolution, the said The East Cleveland Railroad Company did extend the use of electricity over that part of its lines constructed and operated under and by virtue of the ordinances mentioned in paragraph VIII of

the complainant's bill and known and designated in said ordinance passed July 13, 1888, and in said resolution adopted May 13, 1889, as its main line.

This defendant denies each and every allegation and inference of fact and law contained in paragraph XIX in complainant's bill, except such as are herein expressly admitted and pleaded.

XXI. This defendant admits that on or about the 30th day of March, 1891, its Council passed another ordinance which was duly accepter by said The East Cleveland Railroad Company granting the right to said Company to construct and operate a second or additional track upon Central Avenue (formerly known as Garden Street) from the east line of Willson Avenue to the right of way of The Cleveland and Pittsburg Railroad Company, and to connect said tracks so authorized with the tracks then in and upon Central Avenue at Willson Avenue and at The Cleveland and
87 Pittsburg Railroad track; that said ordinance provided that it should be accepted by said Company in writing and that such acceptance should be deemed a contract on the part of the said Company with the City to perform all and singular the matters and things required to be performed in said ordinance, and that in and by said ordinance it was further provided, "the rights herein granted shall be valid until the expiration of the grants for the said Company's main line."

This defendant admits that said ordinance was accepted in writing by said Company, and the track thereby authorized was constructed and built, and the distance thereby covered is two thousand four hundred feet.

This defendant avers that the proper interpretation of the words "Company's main line" as used in said ordinance is its Garden Street line to which the track thereby authorized was annexed as an extension, and that the same expires on the 22nd day of March, 1905; but this defendant avers that if the proper interpretation of the words "Company's main line" means the Euclid Avenue line authorized and constructed under and by virtue of the ordinances described in paragraphs VIII and IX of complainant's bill, and renewed by the ordinance passed September 15, 1879, and on which said Company was authorized to substitute electricity for animal motive power by the ordinance passed July 13, 1888, and recited in paragraph XIX of the complainant's bill and of this answer, then this defendant avers that it was not within the power, of the Council in extending the track of the Garden Street branch to fix a different date for the expiration of such extension of track from that fixed in the ordinance making the original grant.

This defendant denies each and every allegation and inference of fact and law contained in said paragraph XXI of said bill, except as herein expressly admitted and pleaded.

XXII. This defendant admits that on or about April 20,
88 1891, its Council passed another ordinance granting to The East Cleveland Railroad Company permission to lay an additional or second track in Quincy Street from New Street to Wood-

land Hills Avenue, and authorized said Company to connect said tracks with the tracks now laid upon New Street.

This defendant admits that said ordinance contained a provision as follows: "The right herein granted shall be valid until the expiration of the grants for said Company's tracks on said Quincy Street east of Lincoln Avenue to-wit: July 13, 1913." But this defendant avers that the grants for said Company's tracks on said Quincy Street east of Lincoln Avenue are contained in the ordinance passed February 9, 1885, recited in paragraph XVII of complainant's bill and of this answer, and by the terms of which the rights thereby granted expired on the 20th day of September, 1904, and this defendant avers that the correct date for the expiration of the grants for such Company's tracks on Quincy Street east of Lincoln Avenue does, in law, control the erroneous recital thereof.

This defendant denies each and every allegation of fact and law contained in paragraph XXII not herein expressly admitted and pleaded.

XXIII. This defendant admits that on or about the 17th day of July, 1893, its Council passed an ordinance granting to The Cleveland Electric Railway Company, the successor of The East Cleveland Railroad Company, permission to extend and operate its double track street railroad in Prospect Street from Erie to Ontario Street, and also to extend its tracks from the present tracks at the intersection of Superior and Seneca Streets; thence along Seneca Street to Lake Street; and thence along Lake Street to Ontario Street; and thence along Ontario Street to the center of Monumental Park connecting with the present tracks in Ontario Street; and also to construct
89 and operate the same by electricity, and that the right thereby granted on said streets shall be in force until the 13th day of July, 1913.

This defendant admits that among other conditions in said ordinance, it was provided that the Company should comply with and perform all the terms and conditions of the resolution adopted by the City Council of this defendant, on the 29th of May, 1893, in reference to the consolidation of the various companies forming the complainant; that it was also provided that the Council should have the right at any time to require the Company to operate its cars over the entire length of any of the lines or extensions of said constituent companies in the same manner and between the same termini as cars were operated prior to the consolidation of said constituent companies, and that the Council might require night cars to be operated the entire length of each of the lines of the Company at least hourly each way between midnight and six o'clock A. M., and that these provisions should apply to and be a condition on each and all the grants made by the Council of said constituent companies or either of them.

This defendant admits that by said ordinance the Company was required to sprinkle between the outer rails of its track including the space commonly known as the "devil strip" on all streets and street intersections wherein any tracks on any of the lines of said Company are laid in a manner satisfactory to said Director; but this

defendant denies that this requirement or any of the other requirements of said ordinance pleaded in paragraph XXIII of complainant's bill and admitted in this answer were new conditions and burdens imposed by said ordinance on said complainant.

This defendant denies that any portion of the streets on which The Cleveland Electric Railway Company was authorized to extend its double track street railroad had been originally constructed
90 as a part of the Garden Street railway or branch, and denies also that said ordinance was passed with special reference to the running of cars operated upon the Garden Street branch or that immediately upon the completion and equipment of said tracks for operation, the Council of this defendant required all cars operated upon said Garden Street branch to be operated upon the tracks provided for by said ordinance.

This defendant denies each and every allegation and inference of fact and law contained in paragraph XXIII of complainant's bill not herein expressly admitted and pleaded.

XXIV. This defendant further admits that on February 19, 1894, its Council passed an ordinance entitled: "An ordinance granting permission to The Cleveland Electric Railway Company, and The Cleveland City Railway Company to extend their tracks in Willson Avenue," and that said ordinance was duly accepted by both of said companies; that by said ordinance, The Cleveland Electric Railway Company was granted permission to extend its double track street railroad on and along Willson Avenue from its present tracks at the intersection of Scovill and Willson Avenues to its present tracks at the intersection of Perkins and Willson Avenues, and from its present tracks at the intersection of Hough and Willson Avenues to the northerly terminus of said Willson Avenue; that permission was granted The Cleveland City Railway Company to extend its double track street railroad on and along said Willson Avenue from its present track at the intersection of Woodland and Willson Avenues to its present tracks at the intersection of Lexington and Willson Avenues, and from its present tracks at the intersection of Payne and Willson Avenues to the northerly terminus of
91 said Willson Avenue; that such extensions were to be constructed, maintained and operated in connection with the existing tracks in said Willson Avenue as a double track street railroad with electricity as a motive power. This defendant admits that in and by Section V of said ordinance, it was provided that the operation of cars on said Willson Avenue by The Cleveland City Railway Company and the complainant should be under the control and regulation of the Council, and that Section VI of said ordinance provides as follows: "A passenger on any car operated on any part of said Willson Avenue, on the payment of one fare, either in cash or by ticket, shall be entitled without additional or extra charge, to be transferred to any other line of either of said companies intersecting or coming to said Willson Avenue, including the lines on Broadway, and to have a continuous ride thereon, with the right, without additional or extra charge, to be transferred from such second line to a car on any other line of the Company operating the same

which crosses the Cuyahoga River, and passengers on any line of either of said companies intersecting or coming to said Willson Avenue, including the lines on Broadway, shall be entitled, without additional or extra charge, to be transferred to said Willson Avenue line and to have a continuous ride thereon."

This defendant further admits that Section VII of said ordinance requires the paving of the tracks and the space between the tracks and one foot outside of each rail on said Willson Avenue, and that the two companies were required to widen the roadway of said Willson Avenue between Euclid Avenue and Scovill Avenue five feet on each side, and that Section X of said ordinance provided that the grant thereby made should be in force until the first day of July, 1914.

This defendant denies each and every allegation and inference of fact and law contained in paragraph XXIV of complain-
92 ant's bill except such as are herein expressly admitted and pleaded.

XXV. This defendant admits that on or about June 25, 1894, its Council passed an ordinance which was duly accepted by said Company granting to the complainant the right to extend and operate its double track street railroad in Quincy Street from New Street to Willson Avenue, and to operate the same by electricity; that the double track street railway which, at the time of the passage of said ordinance, was being operated in Quincy Street and is therein referred to, was the Garden Street branch of the East Cleveland Railroad Company, which had been constructed and operated under the various ordinances herein referred to, and that the grant hereby made, it was expressly provided, shall terminate with the grant for said Company's present line in Quincy Street, the date for the expiration of which is fixed by the ordinance as set forth in paragraph XVII of this answer.

This defendant denies each and every allegation and inference of fact and law contained in paragraph XXV of complainant's bill except such as are herein expressly admitted and pleaded.

XXVI. This defendant admits that on the 29th day of May, 1893, its Council passed a resolution consenting to the consolidation which had previously taken place of The East Cleveland Railroad Company, The Broadway and Newburg Street Railroad Company, The Brooklyn Street Railroad Company and the South-side Street Railroad Company, making the complainant, The Cleveland Electric Railway Company.

This defendant avers that before the passage of said ordinance, The Cleveland Electric Railway Company addressed to the Council of said defendant, a communication which is in words and figures following:

"CLEVELAND, OHIO, *May* 22, 1893.

To the Honorable City Council of the City of Cleveland.

GENTLEMEN: The Cleveland Electric Railway Company was organized on the 25th day of March by the consolidation of the

East Cleveland Railroad Company and the Broadway and
93 Newburg Street Railway Company. Subsequently it was further enlarged by consolidation on the 24th day of April, 1893, with it of the Brooklyn Street Railroad Company and the South Side Street Railroad Company. These two consolidations were made under advice of counsel, and believed by the officers and stockholders of the respective companies to be legal and valid in all respects. Inasmuch as some question seems to have arisen as to the intention of the Cleveland Electric Railroad Company, the company desires to state to you officially that it does not claim any rights greater than the constituent companies forming the organization; that it intends to obey all ordinance- to which each and all of the constituent companies were subject; that it has, since such consolidation has been effected, issued transfer checks to all persons desiring them, to enable such persons to have a continuous ride from any East Side line to any South or West Side line, and from any South or West Side line of the company to any East Side line, for one fare, and will continue such system of transfers where it cannot better accommodate its patrons by such through lines as it may establish; that it disclaims all intention of charging more than one fare for any such continuous ride; and that its aim has been, and will be, to give its patrons vastly improved service and accommodations by reason of such consolidation.

Very respectfully,

THE CLEVELAND ELECTRIC RAILWAY COMPANY,

By HORACE E. ANDREWS, *Vice-Pres.*"

This defendant avers that the resolution passed by its Council consenting to said consolidation is in words and figures following, to-wit:

"Resolved that the Council hereby consents to the consolidation of the East Cleveland Railroad Company, The Broadway and Newburg Street Railroad Company, the Brooklyn Street Railroad Company and the South Side Street Railroad Company under the name of the Cleveland Electric Railway Company, under the following terms and conditions:

That only one fare shall be charged for a continuous ride on or over any line of railway formerly owned by any other of said constituent companies and any line of any other of said constituent companies within the limits of the city of Cleveland; and passengers on any of such lines paying one fare shall be entitled, without extra or additional charge, to be transferred to any other of said lines and have a continuous ride thereon for said single fare. The said The Cleveland Electric Railway Company shall within ten days after the adoption of this resolution, file with the City Clerk, in writing, an acceptance of the terms and conditions herein and an agreement to perform the same, otherwise this resolution shall be null and void."

This defendant admits that after the passage of said resolution, the complainant accepted the same in writing; but it denies each
94 and every allegation and inference of fact and law contained in said paragraph XXVI of the complainant's bill not herein expressly admitted to be true.

XXVII. This defendant admits that on or about the first day of July, 1903, the complainant acquired by purchase all of the companies forming the consolidated company known as The Cleveland City Railway Company, but it denies each and every other allegation or inference of fact and law contained in paragraph XXVII of the complainant's bill not herein expressly admitted to be true.

XXVIII. This defendant admits that its Council on the 11th day of January, 1904, passed an ordinance which is in words and figures as set forth in paragraph XXVIII of the complainant's bill; that the defendant, The Forest City Railway Company, accepted said ordinance, and that said The Forest City Railway Company claims that it is now the owner of and has the right beginning from the 22nd day of March, 1905, to operate upon the streets described in said ordinance, and which are now occupied by the complainant, and to oust the complainant from the possession thereof; also that acting in pursuance of the terms of said ordinance, the said The Forest City Railway Company has made demand upon the complainant to agree with it as to the value of the tracks, wires, poles and other appliances in said streets to the end that the same may be purchased by the defendant and paid for as provided in said ordinance; also that the complainant has declined to negotiate with reference to the value of its property as therein described or to vacate the streets at the expiration of its franchises therefor; and that the defendant, the Forest City Railway Company, has made formal application to the Council of this defendant in which it has asked that this defendant proceed at the earliest practicable moment to have the value of said tracks, poles, wires and appliances erected in the highways along the routes described in the ordinance ad-
95 judicated by some Court, and also to adopt such proceedings as may be necessary to deliver possession of said streets and highways to the said The Forest City Railway Company.

This defendant denies all the other allegations and inferences of fact and law contained in paragraph XXVIII of complainant's bill, except such as are herein expressly admitted to be true.

XXIX. This defendant denies that said ordinance of January 11, 1904, is void because contrary to and in violation of the Constitution of the United States in that it is a law of the State of Ohio impairing any contract obligation existing between the complainant and this defendant, or that the complainant has any contract with respect to the streets covered by said ordinance which continues in force until July, 1914, or to any date subsequent to the 22nd day of March, 1905.

This defendant denies that the passage of said ordinance of January 11, 1904, is, on the part of this defendant, in furtherance of any combination or conspiracy between the authorities of this defendant and the Forest City Railway Company, or any one else, for the purpose of depriving complainant of its right to operate in the streets described in said ordinance unless it will submit to unreasonable requirements as to its rates of fare on its other lines of railway in the defendant City; but this defendant avers that the defendant, The

Forest City Railway Company, applied for and obtained said ordinance in good faith, and that this defendant, the City of Cleveland, in due conformity to all the provisions and requirements of law, did make and pass said ordinance in good faith, to protect the public interests of this defendant and the inhabitants thereof, to bring about a substantial reduction in the rates of fare charged for services rendered by the operation of the street railroad upon the
96 streets in said ordinance recited and upon other terms and conditions in said ordinance appearing considered by the Council of this defendant conducive to the public interest.

And this defendant admits that it is its intention to enforce the terms of said ordinance and to put the defendant, The Forest City Railway Company, in possession of said streets, and to oust the complainant therefrom, and to enforce against the defendant, the Forest City Railway Company, a full compliance with all the obligations undertaken by it to be performed by the acceptance of the said ordinance, and will require said The Forest City Railway Company to maintain and operate the lines of street railway required therein to carry passengers at the rates of fare pr-scribed therein, and to carry out all the other provisions, stipulations, agreements, obligations and covenants of said ordinance; but this defendant denies that by so doing it will deprive the complainant of the benefit of any existing contract rights, or that it will impair any contract existing between it and the complainant, or that it will make it impossible for the complainant to carry out other existing contract with this defendant according to the true tenor, intent and effect thereof. This defendant further denies that before the complainant could at law contest the validity of said ordinance, a multiplicity of suits would ensue, or that great inconvenience and conflict and trouble would arise from the complainant's refusal to recognize the validity of said ordinance, or that by reason of anything alleged in the complainant's bill it is without adequate remedy at law.

This defendant also denies all of the allegations and inferences of fact and law contained in paragraph 29 of the complainant's bill not herein expressly admitted to be true.

And having fully answered the bill of complaint filed
97 against it herein, this defendant prays to be dismissed hence with its reasonable costs in this behalf expended.

THE CITY OF CLEVELAND,
By NEWTON D. BAKER,
Its Attorney.

THE STATE OF OHIO, *County of Cuyahoga, ss:*

Newton D. Baker, being first duly sworn, deposes and says that he is the duly elected and qualified City Solicitor of the City of Cleveland, defendant in the foregoing action; that the facts, statements and allegations contained in the foregoing answer are true as he verily believes.

NEWTON D. BAKER.

Sworn to before me by the said Newton D. Baker, and by him subscribed in my presence this 7th day of April, A. D. 1905.

MANUEL LEVINE, [SEAL.]
Notary Public.

(Endorsements on Answer:) In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division. No. 6851. In Equity. The Cleveland Electric Railway Company, Complainant *vs.* The City of Cleveland and The Forest City Railway Company, Defendants. Answer of the City of Cleveland, one of the Defendants in the above entitled cause, to the Bill of Complaint of The Cleveland Electric Railway Company, in the Circuit Court of the United States for the Northern District of Ohio. Filed Apr. 7 1905. Irvin Belford, Clerk U. S. Circuit Court, N. D. O. —— ——, Attorney for City of Cleveland.

98 (*Amendment to Bill of Complaint.*)

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendants.

Amendment to Bill of Complaint.

The complainant now comes, and by leave of court, files this amendment to its bill of complaint herein:

1. The complainant shows in addition to the matters and things in its original bill of complaint herein set forth, that prior to the Act of May 14, 1878 (75 Ohio Laws, 359) the right and privilege of operating street railroads within the municipalities of Ohio was granted by the State upon the condition only that the municipality in which any particular road was put in operation should consent thereto; that the statutes of Ohio prior to said Act of May 14th, 1878, contained no limitation of time for the exercise of franchises granted by the State to construct and operate street railroads.

2. Your orator further shows that of the lines of street railroad now owned and operated by it, more particularly described in the bill of complaint herein, the following lines and routes, which it now owns and operates, were acquired by it by grant from the State of Ohio, and with the consent of the defendant, the City of Cleveland, prior to the Act of the Legislature of May 14, 1878; that is to say, prior to May 14, 1878, The East Cleveland Railroad Company was organized with a perpetual charter granted by the State of Ohio and received from the State the right and privilege of maintaining and operat-

99 ing street railroads in the City of Cleveland, and in the Village of East Cleveland by and with the consent of said

City and Village, upon the following streets, that is to say:—Commencing at Superior and Water Streets in said City, thence on and along Superior Street to and around the westerly and southerly sides of the Public Square to Euclid Avenue, thence on and along Euclid Avenue to Erie Street, thence on and along Erie Street to Prospect Street, thence on and along Prospect Street to Case Avenue, thence on and along Case Avenue to Euclid Avenue, thence on and along Euclid Avenue to Lake View Cemetary; also beginning at Superior and Water Streets, thence on and along Superior Street to and around the westerly and southerly sides of the Public Square to Euclid Avenue to Lake View Cemetary; also beginning at Superior thence on and along Erie Street to Ohio Street (now Central Avenue), thence on and along Ohio Street to Garden Street (now Central Avenue), thence on and along Garden Street to Baden Street, thence on and along Baden Street to Quincy Street, thence on and along Quincy Street to New Street (now Van Buren Street) thence on and along New Street to Garden Street; that prior to said May 14th, 1878, said The East Cleveland Railroad Company had constructed and put in operation lines of railroad on and along said streets in pursuance of, and on the faith of said grant from the State of Ohio.

3. Your *favor* further shows that included within the lines of railroad which it so acquired from the State of Ohio prior to May 14, 1878, with the right to operate, is included substantially all of the line of railroad which the defendant, the City of Cleveland, has undertaken to grant to the defendant, The Forest City Railway Company, as appears by the original bill of complaint herein, upon the claim that your orator's rights thereto expired on March 22, 1905, but your orator shows that with respect to all of its lines aforesaid which were built and placed in operation prior
100 to May 14th, 1878, the right which The East Cleveland Company had and received from the State, on the faith of which said lines were built and constructed, was a right in perpetuity which has never been surrendered by said The East Cleveland Railroad Company, or its successors, and that independently of, and in addition to, any right undertaken to be granted or conferred upon The East Cleveland Railroad Company by the City of Cleveland, it possesses, and your orator as it- successor in the possession of the property the right to continue the operation of all its lines of railroad so constructed by The East Cleveland Railroad Company prior to May 14th, 1878.

Your orator, therefore, files this amendment to its original bill and asks the consideration of the court of the facts herein set forth as ground for the relief asked by the original bill herein, and your orator prays, as in the original bill, it has already prayed, for relief in the premises.

SQUIRE, SANDERS & DEMPSEY,
Attorneys for Complainant.

(Endorsements:) No. 6851. The Cleveland Electric Railway Company, Plaintiff *vs.* The City of Cleveland and The Forest City

Ry. Co. Defendants. Amendment to bill of complaint. Filed April 8th, 1905. Irvin Belford, Clerk. Squire, Sanders & Dempsey, Cleveland, Ohio.

101 *(Opinion of the Court.)*

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

6851. Equity.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendant-.

Statement of the Case.

The complainant files its bill against the City of Cleveland and The Forest City Railway Company, alleging that the enforcement of a certain ordinance of the City of Cleveland will violate the complainant's rights under the Constitution of the United States, especially by impairing the obligation of its contracts with the City; asking that the ordinance be decreed to be null and void; and, alleging that irreparable injury will be done to it by enforcing the ordinance, and that it has no adequate remedy at law, prays that the defendant, the City of Cleveland, its officers, agents, attorneys, etc., be now temporarily, and hereafter perpetually, enjoined from putting the ordinance, alleged to be illegal, into effect.

The bill sets out the corporate history of the complainant, and the several ordinances of the City upon which its right to operate a street railroad is based, and especially in relation to its right to operate a street railroad on what is called its Garden Street (now Central Avenue) line, which is the immediate subject of this controversy.

An amendment to the bill was filed before the hearing, but this will be treated, and spoken of in this opinion, as part of the bill itself.

102 Upon the filing of the bill, a temporary restraining order was allowed, *ex parte* and the case is now before the Court upon the application for a temporary injunction.

The defendants have fully answered; all of the ordinances and other facts affecting the question before the Court have been presented; the case has been most ably and elaborately argued; and this hearing, so far as this Court is concerned, is practically a hearing on the merits.

The complainant, by consolidation with other companies and by purchase of other lines, is now the owner of about two hundred and thirty-six (236) miles of street railway track in the City of Cleveland, comprising practically all of the street railway mileage within the City. The East Cleveland Railroad *Railroad* Company is the

constituent company to which, prior to the consolidation, all of the rights involved in this proceeding were granted. This corporation,—that is, The East Cleveland Railroad Company,—was incorporated in the year 1859, and, in the course of the following three years, received grants, by ordinance of the City of Cleveland, for the operation of a line beginning at what was then the easterly city limit at Willson Avenue, thence by way of various streets to and through the Public Square to Water Street. These grants were made to expire September 20, 1879, and under them a street railroad was constructed.

In 1862, the East Cleveland Railroad Company was granted, by the Township Trustees of East Cleveland Township, the right to construct a single street passenger railway track from the Willson Avenue terminus of its line, in the City of Cleveland, eastwardly along Euclid Street (now Euclid Avenue,) a distance of about two miles, to Doan's Corners. There was no time limitation to this grant; and, under it, a street railroad was constructed and put in operation.

Prior to January 14, 1868, the East Cleveland Railroad Company applied to the City Council of the City of Cleveland
103 for leave to construct a street railroad from the intersection of Prospect and Brownell Streets to connect with the main line of its railroad, thence along the center of Brownell Street to its intersection with Garden Street; thence easterly along the center of Garden Street to and across Willson Avenue to the easterly boundary of said City. The requisite consents of the property owners were filed; bond in the sum of Twenty Thousand Dollars was given; bids were filed, as required by the Statute; and the Council declared, by resolution, that this bid provided for the lowest rates of fare for carrying passengers on the proposed line, made by any company or individual.

Thereupon, on January 14, 1868, the council passed a resolution giving to The East Cleveland Railroad Company permission to lay down a track on the streets named in the application, and to use and occupy the tracks, switches and turnouts during the period of twenty (20) years; and also the right to continue to use and occupy the streets, avenues and public grounds over which its main line was then constructed and operated, westerly from the junction of the Garden Street branch with the main line to its western terminus (that is to say, Water Street,) for the same length of time.

On January 16, 1868, the Railroad Company filed its acceptance of "the grants and permits to construct and operate a street railroad from their main track in Prospect Street, through Brownell to Garden, and through Garden Street to the easterly line of the City, in accordance with their petition and bid, and the ordinance and resolution of the Council."

In March, 1868, the Village of East Cleveland, which bounded the City of Cleveland, on the east at the point where the Garden Street branch, as granted by the ordinance of the City of Cleve-
104 land, ended, granted to The East Cleveland Railroad Company the right to construct a street railroad, "as a branch of

its said railroad," through and along certain streets in the Village, beginning at the termination of its branch road at the easterly line of the City of Cleveland, in Willson Avenue, for a period of twenty (20) years. This ordinance was accepted by the Street Railroad Company, and the Garden Street Branch was built, as contemplated by the two ordinances just referred to, extending from Prospect Street, at Brownell, to the southerly line of Wade Street, at Baden Street. The length of this Garden Street branch, as thus originally established by the ordinances of the City of Cleveland and the Village of East Cleveland, was about two miles.

On March 25, 1873, the City Council passed a resolution granting to The East Cleveland Railroad Company the right to lay a second, or double, track in Garden Street, between Brownell Street and Willson Avenue. There are no words in this ordinance limiting the time during which the right should exist.

On May 23, 1876, a portion of the Village of East Cleveland having been annexed to the City of Cleveland, the Council of the City passed an ordinance entitled "An Ordinance to permit The East Cleveland Railroad Company to extend the Garden Street branch of its road," which ordinance authorized the Railroad Company

"to extend the Garden Street branch of its road to the easterly end thereof, along Garden Street to Baden Avenue, and along Baden Avenue to Quincy Street, and along Quincy Street to New Street, and along New Street to Garden Street, there to connect with the Garden Street track; and to equip and operate said extension for twenty years in connection with said branch and its main line."

On September 15, 1879, the City Council passed an ordinance granting a renewal, for the period of twenty-five (25) years from and after September 20, 1879, of the right to operate a street railroad in and along Superior Street, Euclid Avenue, Erie Street, Prospect Street, Case Avenue and Euclid Avenue.

On March 20, 1880, the City Council passed an ordinance entitled "An Ordinance to permit The East Cleveland Railroad Company to extend the Garden Street branch of its railway," which, omitting the formal parts, is, in full, as follows:—

"SECTION 1. Be it ordained by the City Council of the City of Cleveland, That The East Cleveland Railroad Company be and is hereby authorized and empowered to extend the Garden Street branch of its railway from the present track, at the intersection of Baden Avenue and Quincy Street, in an easterly direction on and along said Quincy Street, to the intersection of Lincoln Avenue, and to equip and operate the said extension and its Garden Street branch for the period of twenty-five years from and after the passage of this ordinance; but with the express condition that no increase of fare shall be charged by said company on any part of its said branch, or of its main line, or of said extension by reason of said extension. This grant is made subject to all ordinances of said City Council now in force, or which may hereafter be duly passed regulating street railroads.

SEC. 2. This ordinance shall take effect and be in force from and after the date of its passage and legal publication."

This is the ordinance which the City claims is the only ordinance under authority of which the Garden Street branch is now operated, and which expired on the twenty-second day of March of the present year.

On February 9, 1885, the City Council passed an ordinance entitled "An ordinance to permit the East Cleveland Railroad Company to extend the Garden Street branch of its railway," by which it authorized the Railroad Company

"to extend the Garden Street branch of its railway from the termination of its present track at the intersection of Quincy Street and Lincoln Avenue in an easterly direction on and along said Quincy Street to Woodland Hills Avenue and equip and operate said extension as a single-track railroad, with all necessary switches * * * in connection with said branch and its main line, and terminating with the grant for the main line," etc.

On June 18, 1887, an ordinance was passed, entitled "An Ordinance to permit The East Cleveland Railroad Company to extend the Garden Street branch of its railway," by which the Railroad Company was authorized

106 "To extend the Garden Street branch of its railway from the intersection of its present track with Baden Avenue, upon Garden Street, in an easterly direction along and upon said Garden Street to the easterly line of Lincoln Avenue, and equip and operate said extension, * * * in connection with said branch and its main line, and terminating with the grant for the Garden Street main line."

On March 10, 1890, an ordinance was passed, entitled "An Ordinance granting The East Cleveland R. R. Co. the right to substitute electric motive power for horse power upon its Garden Street branch." Section 1 of this ordinance is as follows:—

"SECTION 1. Be it ordained by the City Council of the City of Cleveland, that The East Cleveland R. R. Co., its successor or assigns, is hereby authorized and granted the right to operate its Garden Street branch by electricity, *i. e.* from the intersection of Prospect and Erie Streets, along Erie Street to Ohio Street, along Ohio Street to Brownell Street, along Brownell Street to Garden Street, and along Garden Street to Lincoln Avenue; also along New Street from Garden Street to Quincy Street, and along Quincy Street to Woodland Hills Avenue, and authority is hereby granted said Company to erect and maintain on said streets all necessary poles and wires, and the necessary appliances and fixtures for the conducting of electric currents to operate by electric motive power the said Garden Street branch during the term of its present grant for said Garden Street branch. All poles erected under this ordinance to be of iron unless otherwise ordered by the Board of Improvements."

On April 4, 1890, the East Cleveland Railroad Company accepted the above ordinance, and agreed "To abide by the provisions, conditions, limitations and restrictions contained in said ordinance."

On March 30, 1891, an ordinance was passed, authorizing The East Cleveland Railroad Company to lay and operate a second track on Central Avenue, (formerly Garden Street), from the east line of Willson Avenue to the Cleveland & Pittsburgh Railroad tracks; and it was provided, by Section 4 of the ordinance, that "The right herein granted shall be valid until the expiration of the grants for the company's main line."

On April 20, 1891, the Council passed an ordinance granting to The East Cleveland Railroad Company permission to lay an additional track in Quincy Street, from New Street to Woodland Hills Avenue, authorizing the Company to connect the additional
107 track with the tracks then laid upon New Street, and providing that the right therein granted should be valid "until the expiration of the grants for said Company's tracks in Quincy Street east of Lincoln Avenue, to-wit, July 13, 1913."

On March 25, 1893, The Cleveland Electric Railway Company was organized, by the consolidation of The East Cleveland Railroad Company and The Broadway & Newburg Street Railway Company, and subsequently it was further enlarged by consolidation with two other street railroad companies.

On February 19, 1894, an ordinance was passed, granting permission to The Cleveland Electric Railway Company and The Cleveland City Railway Company to extend their tracks in Willson Avenue. Willson Avenue is a cross-town street, and crosses the various tracks of The Cleveland Electric Railway Company and The Cleveland City Railway Company at many points, including the tracks of the Central Avenue, (formerly Garden Street,) line.

Section 6 of this ordinance provides, as follows:—"A passenger on any car operated on any part of said Willson Avenue, on payment of one fare, either in cash or by ticket, shall be entitled, without additional or extra charge, to be transferred to any other line of either of said companies intersecting or coming to said Willson Avenue, including the lines on Broadway, and to have a continuous ride thereon, with the right, without additional or extra charge, to be transferred from such second line to a car on any other line of the Company operating the same which crosses the Cuyahoga River, and the passengers on any line of either of said companies intersecting or coming to said Willson Avenue, including the lines on Broadway, shall be entitled, without additional or extra charge, to be transferred to said Willson Avenue line and to have a continuous ride thereon. The Council shall at all times have the right to prescribe rules and regulations in respect to the transferring of passengers as provided for in this action."

On July 2, 1894, the Council passed an ordinance granting to The Cleveland Electric Railway Company the right to extend and operate its street railroad in Quincy Street, from New Street to Willson Avenue. The distance between these two points is very short,
108 the purpose being to permit a connection between the two tracks. Section 6 of this ordinance provides as follows:—

"This grant shall terminate with the grant for said company's present line in Quincy Street."

On August 8, 1901, the Council passed an ordinance granting to

The Cleveland Electric Railway Company the right to lay a track along the easterly side of the Public Square, and the right to use the tracks of The Cleveland City Railway Company on Superior Street from the westerly side of the Public Square to Erie Street. Section 4 provides:—

"This grant shall expire on March 22, 1905, unless it be sooner terminated by the City, and the City reserves to itself the right to terminate it at any time," etc.

The purpose of this ordinance was to facilitate the transportation of passengers in the congested part of the City.

The result of the various consolidations of companies and acquisition of properties has been to establish one system throughout the City, over which only one fare is charged for a continuous ride, with certain privileges of transfer.

On January 11, 1904, the City granted to The Forest City Railway Company "the renewal right to maintain and operating the existing street railroads," namely, the Garden Street line.

No question is made, and it is stated by counsel on both sides that no question can be made in this Court, as to the validity of this ordinance, except on the ground that it is in violation of the Constitution of the United States.

109 *Opinion of the Court.*

TAYLER, *J.*:

The complainant bases its claim to relief on several grounds, which are, I think, fairly stated as follows:—

First.

1: That since, prior to the Act of 1878, the Legislature had not delegated to the municipality the right to limit the term of a street railroad franchise, and, as the Legislature has not, since that time, withdrawn from any Street Railroad Company enfranchised prior to 1878 the rights it had thus acquired, the act of the City Council, and of the Council of the Village of East Cleveland, in limiting the term of the complainant's predecessor's rights to twenty years, was invalid, and that the franchise of the Company's "main line" is unlimited.

2: That for the same reason, since the Trustees of East Cleveland Township gave an unlimited and original franchise to The East Cleveland Railroad Company, that franchise still endures.

3: That, since, as claimed, the right to operate the Garden Street (Central Avenue) line—or at least a part of it,—is made to expire with the expiration of the franchise on the "main line," such right is now held in perpetuity, or for an unlimited period.

Second.

That, by reason of the consolidation of the companies and the creation of a "system" over which there is a right to ride for one

fare for a continuous passage, however long, with certain transfer rights, the system must be considered as a unit, with a period of expiration fixed at the date of the last expiring franchise.

110 Third.

That, because of the obligations imposed by the Willson Avenue ordinance, especially by Section 6, requiring transfers at the intersection of the Central Avenue and the Willson Avenue lines, a right arises corresponding to the duty imposed; and, since the Willson Avenue franchise will last until 1914, the duty to transfer at Central Avenue continues until that time, the right to operate the Central Avenue line is extended, by implication, to that date.

Fourth.

1: That the original Garden Street (Central Avenue) grant was for an "extension," and not a new route, and that the granting of the right to operate the several "extensions" thereto "in connection with the main line," or "in connection with the Central Avenue branch," to a time beyond the expiration of the right previously given to "the main line," or to the Central Avenue branch, operated to extend the time of expiration of the franchise of the main line and of the branch. And that this is true, whether by "main line," is meant either the Euclid Avenue line or what is called the "Garden Street branch."

2: That some of the Garden Street ordinances,—some for "extensions," and some for laying additional tracks,—provide for an expiration the same as for the "main line," and that, as to the ordinance for double-tracking on Quincy Street east of Lincoln Avenue, it is explicitly provided that the grant should be valid until "the expiration of the grants for said Company's tracks on said Quincy Street east of Lincoln Avenue, to-wit: July 13, 1913:" and that, by the clear implication of the language, we must conclude that, not only does the right to operate the line east of Lincoln Avenue run until 1913, at least, but that the whole Garden Street line must have the same life.

111 I think I have stated the substance of the claims made by the complainant, and they will be discussed in the order in which they have been given.

First.

As to the Claim of Perpetual or Unlimited Franchise.

Prior to the Act of May 14, 1878, the Legislature had not put any limitation upon the power of a municipality respecting the time during which a right to use the streets for street railroad purposes could exist.

Such a limitation first appears in the Act of May 14, 1878 (75 O. L. 360,) where it is provided that no grant, or renewal of a grant, shall be valid for a greater period than twenty-five years.

It thus appears that, prior to the law of 1878, the Legislature had not undertaken to use the authority which it possessed to put any limit upon the time which might be granted by a municipal corporation to the right of a street railroad company to occupy streets. After that, the Legislature withdraw from the municipality all power which it may have had prior to that time to grant such franchises for a period in excess of twenty-five years.

All of the ordinances passed by the City of Cleveland and by the Village of East Cleveland, as well those passed prior to 1878, as those passed since that time, fixed a time limitation on the grants and renewals given to street railroad companies. The only unlimited grant is that given by the Township of East Cleveland.

The conclusion to which I have come is, that, prior to the Act of 1878, the Council of the City of Cleveland had full power to limit the term of a street railroad's franchise to occupy the streets; and that, even if it did not have such power and such limitation was invalid, nevertheless any rights which may have accrued to
112 the predecessor of the complainant, as well as the right to an unlimited franchise which it had from the Township of East Cleveland, have been, for valid considerations, yielded up to the City.

If we assume that, on March 22, 1880, the complainant, (or its predecessor in title,) had an unlimited grant over some part of its Garden Street line, it is clear that, as a property right, it could contract with the City concerning it; for some accruing advantage of one kind it could contract to give back to the City such portions of the term of the franchise as might be agreed upon.

What was done by the ordinance of March 22, 1880, passed when the Council had the power to grant a franchise for a limited term? It was agreed by that ordinance that the Company might extend its Garden Street line to Lincoln Avenue, and "equip and operate its said extension and all of the Garden Street tracks" for the period of twenty-five years. This ordinance was accepted by the complainant, and constituted a contract. If, at the time of the passage of this ordinance, the complainant had the right to operate any part of the Garden Street line after March 22, 1905, that right was yielded up by force of the contract made through the ordinance of March 22, 1880.

Counsel for the complainant cite, on this point, the case of Citizens Railway Company *v.* City Railway Company, 64 Fed. 647, and the same case, 166 U. S. 557.

In the Circuit Court, Judge Woods, sitting with District Judge Baker, held that the term of the franchise was unlimited, and also that an additional and unexpired term of seven years had been granted. Judge Baker dissented from the holding that the term was unlimited, but agreed that it had seven years more to run; so that both were of opinion that an injunction should be allowed.

The case went to the Supreme Court. There it was held that it was unnecessary to pass on the question of an unlimited grant,
113 because the unexpired term of seven years furnished ground for ample relief. The decree of the lower Court was there-

fore modified, by striking out such parts of it as recognized an unlimited grant. The modified decree was exactly what would have been entered by Judge Baker, and exactly what the Supreme Court would have entered if it had found that there was no unlimited grant.

Surely, if the City had the right to grant the use for an unlimited period it had the right to grant it for a limited period. The greater power would include the less.

But, apart from that, there was no question in the Indianapolis case arising out of the making of a contract with the City after the State had delegated to it the power to grant franchises for a limited term. That is the situation here; and that would control the determination of that question, even if the Supreme Court had sustained the validity of Judge Woods' decree.

Counsel for the complainant, in support of his contention for perpetual franchise, cites the case of State, *ex rel.* Taylor *v.* Columbus Railway Company, 24 O. C. C. 609.

A careful examination of this case shows that so far from sustaining the contention of the complainant, it is authority against it. This case does not hold that, prior to the Act of 1878, the Council of a municipal corporation was without power to impose a limitation of time on a street railroad franchise. It did hold, and does hold, that, until the statute imposed the twenty-five year limitation on the power of the Council, a franchise granted without limitation was perpetual, in so far as the power of the Council existed to terminate it; the Court holding that it could only be dealt with under the reserved power of the Legislature, as granted by the Constitution.

The second proposition of the syllabus is as follows:—

114 "Such consent given prior to said act, (that is, the consent of the City to operate a street railway prior to the Act of May 14, 1878,) without any limitation of time, or to a corporation with succession during the term of its charter, is revocable only by legislative authority."

The third proposition is as follows:—

"A franchise or privilege to construct and operate a street railway, granted and consented to prior to said act without limitation of time, is perpetual but subject to be determined by the General Assembly under Sec. 2, Art. 1, or under Secs. 1 and 2, Art. 13 of the Constitution."

In the opinion, on page 621, it is apparent that counsel for the street railroad company recognized that the council might limit the grant. I quote from the opinion:—

"The contention of counsel for the defendant, (that is, for the street railway company,) is that these statutes expressly confer upon municipalities power to grant the right to use the street, and that the power being unlimited as to the duration of the grant it is in the discretion of the municipality to grant without limitation, and if it does, the grant is irrevocable and perpetual."

And again, on page 637, the Court says:—

"But the right of franchise conferred by the State, (prior to the Act of 1878,) being unlimited as to its duration, and the City, under

its power to agree upon the terms and conditions under which the right might be exercised, not having imposed any such limitation, the right continues subject to be determined only in virtue of the power reserved either by legislation or by the Courts by forfeiture."

It therefore appears to have been recognized and held in this case that if, prior to the Act of 1878, the Council had seen fit to impose a time limitation on a franchise, such limitation would have been valid.

That case also passes upon the question of the effect of succeeding ordinances upon the unlimited grants theretofore given. An examination of these ordinances shows that not one of them undertook to fix a time limitation, or indicated in any way, by contract or by implication, that the railway company was yielding up any unexpired term of any previous franchise.

115 For instance, as stated on page 639, the Court says:—

"It is contended also that in some of the ordinances consenting to double tracks it is provided, 'That nothing in this ordinance shall in any wise work an extension of the charter of said railway company,' and that this is an admission by the company that its franchise is not perpetual; that the several ordinances passed subsequently to 1878 repealed former ordinances and made new agreements, and that by acceptance of the latter ordinances the company gave up all rights under the former ordinances, and that as the latter ordinances were passed subsequently to 1878, the limitation of twenty-five years contained in the act of that year applies, and that contention is made also in respect to ordinances making new or additional agreements, but not expressly repealing former ordinances.

"These contentions have given us much trouble because counsel refer to ordinances we are unable to find, either attached as exhibits to the pleadings or in the agreed statement of facts; however, the alleged admission by the company is immaterial, for it is neither averred nor shown that the action of the city was in any instance procured or influenced by the alleged admission, and as to the other contentions, if they are good, then they concede, that by the new agreements or ordinances consent was given for twenty-five years, and a present right to occupy the streets, and when a right presently to occupy the streets is conceded, we do not consider or determine the moot question of its possible duration."

It is thus apparent that the Court did not have before it any ordinance which explicitly put a limitation on the franchise, and, even if it did, it did not pass upon the question, but held that, as there was still time to run, upon the theory of the plaintiff, no practical question arose as to the right to operate its tracks.

The effect of the passage of an ordinance providing for the substitution of electricity as a motive power in place of horse power is referred to, on page 640, as follows:—

"As to the ordinance authorizing the substitution of electrical power, we may say, in the words of Mr. Justice Brown, in City Ry. Co. *v.* Street Ry. Co., 166 U. S. 557, 569: 'There is nothing in the so-called electrical ordinance which affects this question.'"

Now, an examination of the case referred to, in which Mr. Justice Brown delivered the opinion, discloses that there was nothing touching upon the term during which the right should exist, except the words, "Nothing herein contained shall be construed so as to lengthen the term of the franchise, enlarge, or in any way change or
116 effect, the rights of the Citizens' Street Railway Company," etc.

The manifest purpose of the insertion of that provision was to leave *in statu quo* the pre-existing right, so far as duration of franchise was concerned.

Counsel for the City contend that the action of the Court in the case of State, *ex rel.* Hadden *v.* East Cleveland Street Railroad Company, 6 O. C. C. 318, in which this ordinance of March 22, 1880, was under consideration, estops the complainant from now making any claim of the right to a perpetual franchise.

There is some force in this contention, but it is not convincing. The main question in that case was, whether a renewal could be granted before the expiration of the grant to be renewed. The railway company did not seek the forum, but was compelled, by action of the public authorities, to go into Court and defend itself from a present claim of misuser; and mere reasons presented in argument could not, even if inconsistent with the present claim, amount to estoppel, or make that case *res adjudicata* as to this question.

The conclusion, therefore, to which I have come in respect to this claim of perpetual or unlimited franchise, is that, prior to the Act of 1878, the Council had the right to limit the term of a franchise; and that, as to any franchise granted for an unlimited period, the rights of the complainant have been wiped out by its subsequent contracts entered into with the City.

Second.

As to the Effect of the Consolidation and the Creation of a System.

I am not at all impressed with the force of this claim. Of course, there are many and obvious advantages in the development of
117 a system. Unity of management and of fares, as well as unity of responsibility, is a thing much to be desired; and the proposition that, on that account, renewals of franchises might come by implication, would be more plausible if it were not for the consequences which would manifestly follow. It is true that with a system, insofar as it is essential that all of its constituent parts should be unified, the right to operate it and all of its parts ought to be co-determinate; but two observations conclusively answer the contention of the complainant; first, that if there is any control over the life of the system and of its parts, it is the life of the system which must control the life of the parts, not the part the system; second, it is far from the truth that, physically or practically, or legally, any one part of the system is essential to the operation and life of the system.

Third.

The Willson Avenue Ordinance.

The claim that the imposition of certain contract duties by Section 6 of the Willson Avenue ordinance creates, by necessary implication, a franchise right enduring as long as the Willson Avenue franchise, is made.

But an examination of that ordinance does not support the contention. It is true that, under the provisions of Section 6, it is made the duty of the complainant to transfer passengers to its Garden Street line. But the Council could not have intended, by so requiring, that such transfers be made by the complainant when the complainant had no Garden Street line; and, if it had so intended, and had so declared, it would have been invalid. To assume that the City could terminate the right to operate the Garden Street line, and make it impossible for the complainant to transfer passengers at the intersection, and then hold the complainant responsible for not transferring them, is to assume an impossibility.

118

Fourth.

We now come to the last, and most important, of the considerations urged by counsel for the complainant, namely, that the effect of the several ordinances relating to the Garden Street (Central Avenue) line is to extend the franchise along that line, for its entire distance, until July 13, 1913.

This involves an inquiry into the nature of these ordinances and the history of the Garden Street line, as well as a discussion of the power of municipal corporations, and the method by which, if at all, a franchise can arise by implication.

The public cannot be held to have parted with its fundamental rights, except by clear and explicit language, or by implication equally clear.

This rule of law is thoroughly established, and must not be relaxed. It is essential to the preservation of the rights of the people for whose benefit legislatures and municipal councils are created, and public service corporations permitted to exist.

Let us examine into the grounds of these salutary definitions and declarations.

In the State Legislature, under the sanction given and limits set by the Constitution, is reposed the sovereign power of the State. Some of that power it has delegated to the municipal council. A fragment of its authority, (which it may at any moment recall,) it has turned over to the Council of the City of Cleveland. Among other things it has so turned over to the City is the power of limiting, to twenty-five years, the time during which a street railway company, under its perpetual charter to be a corporation, may operate its cars on the streets of the city. I say perpetual charter, because, while the State could repeal or annul the charter, it does not in fact do so except for misuser or nonuser.

119 We have, therefore, the patent fact that a corporation may have perpetual life given it by the State, but may be lawfully denied, by the municipal corporation, the right to have anything more than a nominal life, unless, in some lawful manner, it succeeds to rights which the municipal corporation has granted.

Now, this delegated sovereignty, reposed in the municipality by the State, is to be exercised by the agent with no less care than if exercised by the sovereign itself. It is true, as urged by counsel, that the City Council has plenary power, subject only to certain well defined limitations; but it is not to be therefore said that, having plenary power, that power may be exercised in any other than the method provided by law, or that it may be assumed to have exercised it when the fact does not clearly appear. The Council is not only merely representative of the people who elect it, but it is also the representative of the sovereign. Restrictions are vain if the checks put upon the methods of municipal legislation are not to be respected when they deal with fundamental rights.

The rule that obligations arise, or rights are granted, by mere implication, depends upon the nature of the parties, and the character of the obligations and rights. It is a very easy thing for a man, competent to contract, to have his rights determined by the just implications from his acts. He may find himself parting possession with his property even when he did not intend to do so; but this is all but impossible with a municipal corporation. Indeed, a municipal corporation, through its council or officers, may sometimes make strenuous effort to part with its property or with public rights, and fail in the effort. Instances of this kind could be indefinitely multiplied.

120 But to say that a municipal corporation, the delegate of sovereignty, has parted with one of the powers of sovereignty by implication, is to assume that which, while not impossible, can only be supported by the strongest proof, and by an implication so cogent as to be quite as impressive and conclusive as if the grant had been made in express terms.

The rule of grant by implication is correctly stated in Booth on Street Railways, Sec. 43, as follows:—

"As repeals by implication are not favored, and the rule of strict construction against the grantee is strictly applied to charters of private corporations, a corporation will not be permitted to enlarge a franchise beyond the expiration of its original charter unless that intention has been clearly expressed by the granting power. Amendatory and supplemental acts or ordinances will not have that effect unless the intention to renew the franchise be expressed in apt terms, and any ambiguity in the language used will be resolved in favor of the State."

Judge Cooley, in his work on Constitutional Limitations, at page 394, quotes with approval the language of the Supreme Court of Pennsylvania, in the case of Railroad Company *v.* Canal Commissioners, 21 Pa. St. 22:—

"When a State means to clothe a corporate body with a portion of her own sovereignty, and to disarm herself to that extent of the

power that belongs to her, it is so easy to say so, that we will never believe it to be meant when it is not said. In the construction of a charter, to be in doubt is to be resolved; and every resolution which springs from doubt is against the corporation."

The Supreme Court of the United States has expressed the same thing in no less emphatic terms, in Fertilizing Company *v.* Hyde Park, 97 U. S. 66:—

"Every reasonable doubt is to be resolved adversely to the corporation. Nothing is to be taken as conceded but what is given in unmistakable terms or by an implication equally clear. The affirmative must be shown. Silence is negation, and doubt is fatal to the claim. This doctrine is vital to the public welfare. It is axiomatic in the jurisprudence of this Court."

The general doctrine is laid down by Chief Justice Taney, in Charles River Bridge *v.* Warren Bridge Company, 11 Pet.
121 420, in which the proposition is forcibly stated that, as against the sovereign, no grant can arise by implication; but that the full vigor and powers of the sovereign will be presumed to exist in every case where a claim is made in derogation of them, unless by clear, positive and explicit language a grant has been made.

An interesting case is that of New Orleans & Carrollton Railroad Company *v.* City of New Orleans, 34 La. Ann. 429. In that case a company was chartered by the Legislature of Louisiana in 1833, the duration of its franchise being fifty years. The company was to build and operate a railroad from New Orleans to Carrollton, and all of its property was, for a definite period, exempted from taxation. In 1835, another act was passed by the Legislature, providing for the enlargement and mode of subscription and payment of shares of the capital stock of the original company, conferring upon it certain banking privileges, and authorizing it to construct *a continuation* of the railroad authorized under the previous law, from Carrollton to the Town of Bayou Sara. It was provided in express terms that this second grant, and all privileges conferred by it, were
122 to remain in force for seventy-five years from the date of the passage of the act, and further provided that all of the property of the company in the nature of railroad and equipment should, at the end of said period of seventy-five years, revert to the State. Upon the basis of these two, and certain other, acts of the Legislature of Louisiana pertaining to said company and affecting various of its rights, it was contended that the limitation of time contained in the second grant extended the life of the first grant, and that the exemption from taxation provided in the first grant was annulled by the second, but that all of the property covered by the first grant, with that covered by the second, reverted to the State at the end of the period of seventy-five years. The company was thus contending for a sacrifice or rights very important to it on the one hand, while it contended for an extension of its life twenty-five years on the other.

The Court says:—

"A fact which impresses one as remarkable at the outset is that the Carrollton Railroad Company, which has initiated this litigation,

should be contending with such zeal to enlarge the construction of the 22nd section of the act of 1835, which purports to do nothing except to impose upon the company a burden and to exact a penalty as a compensation for privileges, part of which it never exercised, none of which ever inured to its advantage, and all of which have long since been abandoned. This anomaly is explained when we see that the company deduces from this burden, implied privileges in its own favor, largely exceeding in value the burden itself, and thus seeks to convert the penalty into a reward."

The Court says, on page 440, referring to a phrase in the act of 1835, which provided that the railroad to be constructed under the second grant was to "constitute a continuation" of the road constructed under the first grant, from which the results above outlined were attempted to be deduced:—

"Surely so slender a thread was never required to support so ponderous a weight. * * * They extend, by implication, the existence of the corporation twenty-five years beyond the term to which its duration was expressly limited by its charter."

123 As to the implication of renewal, or expansion of duration see the case of City of Cincinnati *v.* Cincinnati Electric Railway Company, Superior Court of Cincinnati, 30 B. 321, affirmed by the Supreme Court without report.

Among other things held in that case was that

"the fact that, in 1885 and 1888, at which times the grant for Route No. 8 had expired, the Board of Public Works granted to the defendant company permission to substitute electricity as a motive power, in place of animals, did not impliedly renew the grant of that route."

Although, in that case, it was held that the Board of Public Works had no right alone to grant a renewal, the Court says that the language of the grants gives no warrant whatever to any claim that even the Board of Public Works, or the Board of Public Affairs, intended to renew any grant then in existence, or to vitalize any grants whose existence was doubtful. And the Court goes on to say that the expenditures made by the railway company, in substituting electricity as a motive power, do not operate to bring about a renewal by estoppel.

And this is true, not only for the reasons already asserted, but because of the nature of the situation which exists when such legislation is under consideration. The municipal legislative body does not always consider the possible legal deductions which may be made from its language, and it could not do so; when the matter is susceptible of such easy expression in the English language, it might well suppose that if, by an ordinance, it was intended to fix a period for a franchise, it could be done in unmistakable terms. There is no need of concealment in such cases, and no need for implication.

If it be true that to grant the right to build an extension and permit its operation as such in connection with the system of which it forms a part, for a period beyond the duration of the system's franchise, is to extend to that date the franchise of the system, then

we must conclude that the Council may give away the pub-
124 lic's property and the rights of the community, without knowing that it is doing so, and while striving not to do so.

It is most ingeniously and plausibly argued that, to give the right to operate, in connection with the main stem, the extension of an existing line, to a time beyond the time allotted to the existing main stem, is, by implication, to extend the period of right to operate the main stem, because, if it were otherwise, it would lead to an absurdity, and leave the fragmental extension alone and incapable of operation when the franchise of the main stem expired.

Yet, apart from the fundamental objection which I shall hereafter discuss, a little reflection suggests many answers to the claim. The extension may or may not be incapable of independent operation. Is the determination of the right to depend upon the particular conditions of independence, or of isolation, in each case? The price is too high, and the implication too severe and far-reaching, if, as claimed by counsel, as slight prolongation of a line, made under the statute allowing extensions, shall suffice to extend the franchise of two hundred and thirty-six miles of line if, perchance, a careless, or generous, or complacent Council, dealing with the triviality of a few hundred feet of extension, should give the right to, operate it, in connection with the main line, for a period beyond the date of expiration of the main line's franchise. Certainly, no obligation is incurred to so operate in connection with the main line after the company's franchise to the main line has expired.

No doubt the vigilant representatives of the railway company will always endeavor to procure the longest possible term for the most trivial extension. The Council may think the right of such slight importance as to grant it without thought of any additional and important rights arising by implication. When the right is
125 possessed, if it can be possessed, and the corporation is in possession even of only a few hundred yards under such a franchise, it has a position of some importance, and sometimes of controlling importance.

An examination and comparison of the several ordinances relating to this subject leaves upon the mind the indelible conclusion that, after the ordinance of March 22, 1880, all of the extensions of the Garden Street line were intended to expire with the Garden Street main line franchise, viz, March 22, 1905.

I am of opinion that it was the purpose of the Council, all the time, to make the life of the right to operate the Garden Street line all the same throughout its length, and over all the extensions and additional tracks.

This view is supported by the inherent reasonableness of the purpose, and by the language, of most of the extension ordinances. It is, to some extent, discredited by the language of the ordinance dated April 20, 1891, in which it is provided that the right to operate the extension therein referred to shall terminate with "the expiration of the grants for said company's tracks on said Quincy Street east of Lincoln Avenue, to-wit, July 13, 1913." But if this shows that the Council assumed and believed that the franchise east of Lincoln

Avenue did not terminate with the termination of the main Garden Street ordinance, it shows also, beyond the possibility of successful answer, that the right to operate the Garden Street main line did not automatically expand and lengthen every time an extension ordinance was passed, with an extended date of expiration.

But, after all, the conclusively satisfactory answer is, that it is intolerable to think that, instead of using direct, explicit and easily framed language to grant a great right which only the sovereign can grant, it may be conveyed by an implication to be raised by a process of reasoning which the lay mind has difficulty in comprehending, and which it could hardly discern at all if not pointed out; and that this implication may be so derived from apparently innocuous and insignificant words lost in the mazes of an ordinance of relatively small consequence. Fundamental powers of the sovereign to be used by a delegated body, naturally untrained in the law's learning, and rigidly restricted in its use, are not to be so exercised.

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Nor are we denied the possession of other cogent reasons reaching the same conclusion. In view of the contention here made by the complainant, it is most significant and astonishing that in no single instance of an extension ordinance does the title of the ordinance state that any such object was in view, or that any extension of time for expiration of either the main line or the Garden Street branch was involved in the permission thereby given for the construction of an extension. But the law explicitly requires that the "subject" of an ordinance "shall be clearly expressed in its title." What could more surely do violence to the letter, and spirit, and purpose of that legal requirement, than to say that an ordinance entitled an ordinance to permit some petty and relatively unimportant extension should be found to contain within its sophistical implications a grant renewing, for a term of years, an important and far-reaching franchise? Can such an implication, from such an ordinance, so entitled, be justified either on the ground of reason or of propriety?

Respecting the ordinance of April 20, 1891, granting to The East Cleveland Railroad Company permission to lay an additional, or second, track in Quincy Street, from New Street to Woodland Hills Avenue, and wherein it is provided that the right therein granted shall be "valid until the expiration of the grant for said company's tracks in Quincy Street east of Lincoln Avenue, to-wit, July 13, 1913," the conclusive answer is that the grant for the company's tracks in Quincy Street east of Lincoln Avenue did not, and would not, expire July 13, 1913. The ordinance did not state the fact. It is true that the original right in Quincy Street east of Lincoln Avenue was, by the terms of the ordinance granting it, to expire with the main line franchise. If by "main line" was meant the Euclid Avenue line, then it would expire in 1904. Subsequently, that main line franchise was extended to July 13, 1913, and doubtless the person who drafted this ordinance assumed that, as the main line franchise had been extended to July, 1913, the effect of that extension was to extend the time of the rights in Quincy Street east of Lincoln Avenue to that date. But the fatal defect in

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that process of reasoning, and the fatal objection to the date inserted in the ordinance of April 20, 1891, is that, after the passage of the ordinance for the Quincy Street extension east of Lincoln Avenue, and before the passage of the ordinance extending the main line to 1913, to-wit, on March 10, 1890, the Council passed an ordinance authorizing The East Cleveland Railroad Company to substitute electrical motive power for horse power over its Garden Street line to Woodland Hills Avenue, and provided that the right to operate the Garden Street branch should continue during the term of the company's then present grant for the operation of the tracks upon the Garden Street branch.

Now, the Garden Street franchise, at the time of the passage of the ordinance of March 10, 1890, was to expire on the twenty-second day of March, 1905, and the period of expiration of the right to operate an extension east of Lincoln Avenue on Quincy Street, if it could be different from the life of the main stem, if it could be made to co-exist with the franchise on the Euclid Avenue line, was wholly wiped out by this new ordinance authorizing the use
128 of electricity, and changed the termination of its franchise to accord with the franchise for the Garden Street line, viz. March 22, 1905.

It therefore follows, from the language of the several ordinances, properly interpreted, that the franchise for the entire Garden Street line expired March 22, 1905.

While the foregoing considerations lead to the conclusion that the relief sought by the complainant must be denied, still I am constrained to rest my determination of this question on a much broader and more satisfactory ground.

I have reached the conviction that it is beyond the power of the council to endow an "extension" with a duration of life extending beyond the life of the line which is extended. This, it seems to me, must be true, considering the nature of an extension, as well as the statutory provisions relating thereto.

Before we can arrive at a definition of an extension, as the term is used in Ohio, it is necessary to examine the statutory provisions which throw light upon the subject.

Under the law of Ohio, three different things can be done respecting the construction and operation of a street car line; first, the establishment of a route, which must be done in a certain formal way, in which there is an opportunity for competitive bidding; second, the renewal of a franchise, but neither the grant of the right to construct a railroad, nor the renewal of that grant, is valid for more than twenty-five years; and the third thing that may be acquired is the right to extend the track of a street railroad.

The Garden Street line, which, with its extensions, is the subject of this controversy, as originally established, was not an extension of The East Cleveland Railroad Company's line, but was a branch, possessing all the characteristics of an original route, and was established in strict conformity with the requirements of
129 Section- 2501 and 2502. The fact is, that, when authority was given to construct the Garden Street branch, no authority

existed for the extension of the track of a street railroad, and it was necessary, in order to obtain the right to proceed under the authority of what are now Sections 2501 and 2502.

Section 2501 provides as follows:—

"Sec. 2501. No corporation, individual or individuals shall perform any work in the construction of a street railroad, until application for leave is made to the council in writing, and the council by ordinance shall have granted permission, and prescribed the terms and conditions upon, and the manner in which the road shall be constructed and operated, and the streets and alleys which shall be used and occupied therefor, but the council may renew any such grant at its expiration upon such conditions as may be considered to the public interest."

Section 2502 provides as follows:—

"Nothing mentioned in section 2501 of the Revised Statutes of Ohio shall be done; no ordinance or resolution to establish or define a street railroad route shall be passed, and no action inviting proposals to construct and operate such railroad shall be taken by the council; and no ordinance for the purpose specified in section 2501 of the Revised Statutes of Ohio shall be passed until public notice of the application therefor has been given by the Clerk of the corporation once a week, for the period of at least three consecutive weeks in one or more of the daily papers, if there be such, and if not, then in one or more weekly papers published in the corporation; and no such grant as mentioned in section 2501 of the Revised Statutes of Ohio shall be made, except to the corporation, individual or individuals, that will agree to carry passengers upon such proposed railroad at the lowest rates of fare, and shall have previously obtained the written consent of a majority of the property holders upon each street or part thereof, on the line of the proposed street railroad, represented by the feet front of the property abutting on the several streets along which such road is proposed to be constructed; provided, that no grant nor renewal of any grant for the construction or operation of any street railroad, shall be valid for a greater period than twenty-five years from the date of such grant or renewal; and after such grant or renewal of a grant is made, whether by special or general ordinance, the municipal corporation shall not, during the term of such grant or renewal, release the grantee from any obligation or liability imposed by the terms of such grant or renewal of grant."

Neither Section 2501 nor Section 2502 refers to, or has anything to do with, extensions; and it follows that, if an extension has any different life from that with which the thing extended is
130 endowed, it is because the State has not limited the power of the municipal council in respect to the right to limit the life of such extension. The State has delegated this authority to limit the life of an original franchise, or a renewal, to twenty-five years, and does not in terms put any limitation on the life of any other grant relating to street railroads.

If an extension may have any other life than the life of the thing to which it forms an extension, it may be given an unlimited

term of life by the Council. The general law gives authority to the Council to consent to the use of the City's streets by street railroads, and, as we have seen, it was not until 1878 that a proviso was added, to the effect that no grant or renewal, (that is to say, no grant or renewal under Sections 2501 and 2502,) should be valid for more than twenty-five years. This proviso is a limitation upon the plenary power theretofore given by the State to the Council; and no more is to be subtracted, in consequence of that proviso, from that plenary power thus delegated, than its express terms permit. There is no specific limitation, nor can such be derived by implication, upon the power of the Council to give as large a consent for as full a time to an extension as, prior to 1878, it could give to an original grant or renewal, unless the position is sound that an extension, in the very nature of things being a part of the thing extended, must have the same life as, and no more than, the line, or branch, or route, of which it is an extension.

The grants and renewals referred to in the last clause of Section 2502 must mean the original grant or its renewal, and cannot apply to an extension, because the first requirement of Section 2502 is that nothing mentioned in Section 2501,—that is to say, no work performed in the construction of a street railroad,—shall be done until
suitable advertisement has been made, and the right given to
131 the corporation or individuals that will carry passengers at the lowest rate of fare.

Section 2505, which, so far as this question is concerned, is in the same form now as it always has been, provides as follows:—

"Sec. 2505. The council of any city or village may grant permission, by ordinance, to any corporation, individual, or company owning, or having the right to construct, *any street railroad, to extend their track*, subject to the provisions of sections 3437, 3438, 3439, 3440, 3441, 3442 and 3443, on any street or streets where council may deem such extension beneficial to the public; and when any such extension is made, the charge for carrying passengers on any street railroad so extended, and its connections made with any other road or roads, by consolidation under existing laws, shall not be increased by reason of such extension or consolidation."

In its original form, this section was passed May 7, 1869, and was supplementary to an act passed March 27, 1866; and the provisions to which it was then subject were provisions of the act of March 27, 1866, determining how the street railroad company might proceed when it was unable to obtain the consent of a majority of the property owners along the street, and gave them the right of appropriation.

It will be noted that this right of extension is granted under certain conditions named in the section, and also subject to the provisions of sections 3437 to 3443, inclusive. These sections fix the terms and conditions upon which the extension may be made, and are not, therefore, the terms and conditions described in Section 2501, relating to the establishment of a route or the renewal of a grant.

An extension of the track of a street railroad may be permitted

to the corporation owning the line sought to be extended, without any competitive bidding, on such terms and conditions as the council and the company may agree upon, and, of course, subject to the consent of a majority, by feet front, of the property owners along the line of the extension. The right of extension is, as it must be, based upon the fact that there is already a line in existence,
132 and that the permission to extend is a mere development of the right already granted.

The language of Section 3439 is significant in this respect, namely: that "the provisions of sections 2501 and of 2503 to 2505, inclusive, so far as they are applicable, shall be observed in all respects, whether the railway proposed is an extension of an old, or the granting of a new, route."

Now, the extension of an old route is not the granting of a new route, as the juxtaposition of the terms contained in Section 3439 manifestly discloses. The extension of an old route, as the term is used in Section 3439, means, if we can understand the ordinary meaning of language, that it is a mere physical addition to the route or right already established, and that it becomes incorporated in, and actually a physical and legal part of, that which was originally established. Otherwise, we would have the spectacle of a new route, or new line, established without the usual formality of a petition, with an opportunity to all persons to bid for the same.

If this reasoning is sound, it is quite apparent that an extension of an existing route can have no other term of life than the term of life of the line to which it is an extension. If it were not so, we would not only be confronted with the condition where two parts of one line have a different duration of life, but we would have a vested right in the corporation which owned the route to occupy a part of it far beyond the period of life of the original stem, and practically nullify the statutory requirement when new routes are established.

But more than that would be true. Under the law of Ohio, an extension may be granted for an unlimited term, or it must have its life determined by the life of the thing extended. Nowhere can authority be found for limiting the life of an extension, if an
133 extension is considered as a thing to which the council can give any period of time it pleases up to twenty-five years.

Strictly speaking, the granting by the Council of the right to extend a street railway line is not the giving of a franchise, but the expansion or enlargement of a franchise already given. It is, at most, nothing more than a subsidiary franchise. It is not original. It can have no life and no power, which do not inhere in, and belong to, the original line of which it is an extension.

As stated in the text of Booth on Street Railways, section 63: "The extension is a necessary incident to the principal subject of a previous valid grant." Now, if an extension is a necessary incident to the principal subject of a previous valid grant, how can anything more occur than that the extension is absorbed by the previous valid grant, and has precisely the same life which that grant possessed?

The same principle, of necessity, applies to, and indeed is most

aptly illustrated by, the ordinances granting the right to lay an additional track over a part of an established route, or its extension. How can the period during which the right exists to operate the additional track extend beyond the life of the line to which the track is added? The second track is neither an extension nor a renewal. It is not the establishment of an original route. It is not governed by the requirements of Section 2502. There is no competitive bidding. It is a mere incident of the contract between the city and the street railroad company. It is, like the extension, a mere integral part, but only a part, of the main body of the property. The life of the right to operate it must, in the very nature of things, terminate with the life of the main body of which it is a part. The effort of the Council to give it life beyond the life of the main stem is not effective, either to give the right to operate the additional track beyond the period fixed by the ordinances for the main stem
134 franchise, or, by reason of the grant of the additional track, to extend the life of the line of which it forms a part.

The Council had no power, having established a route under certain conditions which the law requires, and having the right to renew it as a renewal, to undertake, by the mere giving of the right to double-track, to give the right to operate the second track for a period beyond the term of the franchise of the line which is double-tracked.

One might as well say that the human foot could survive after the vital organs have ceased to exist; that where there is one life-giving center, the things which grow out of it, and are subsidiary to it, may live after the life-giving center has ceased to have life. The whole theory of the claim that an extension can live longer than the thing extended is at war with reason, and with the nature of things.

It is true that, in this respect, the extension statute has not been considered by the Courts. The word extension has not been defined. It has not been judicially declared that an extension cannot live longer than the thing extended. Probably this is so because no contrary contention has ever before been made. The only reference which has come to the attention of the Court at all touching the subject appears in the opinion in the case of Cincinnati *v.* Cincinnati Street Railway Company, in the Superior Court of Cincinnati, 31 B. 308. In this case the Court says, after holding that it was competent for the Council to impose terms and conditions upon which an extension could be made,

"Among the conditions which I have excepted from the application of this principle, (that is, among the conditions which may not be changed by councilmanic action, or imposed upon a company at the time of making an extension,) are those which provide that no increased rate of fare shall be charged beyond that authorized to be charged on said route No. 13, and that the term of the extension shall terminate with the term of the original grant. These are really not conditions imposed by the Board of Administration, but by the law itself; and may therefore be dismissed from the discussion."

135 The opinion in this case very elaborately discusses the subject of extensions. If the claim had been made, or if the thought had occurred, that an extension might have a life enduring beyond that of the line extended, it would undoubtedly have been raised in this case, and would have been discussed by the Court; but the Court, in view of the subject, which had evidently been elaborately argued and fully considered, makes the remark in passing, which evidences a conviction on its part, that the law itself imposes the condition that the term of the extension shall terminate with the term of the original grant.

These conclusions may be summarized as follows:

1: Prior to the Act of May 14, 1878, it was competent for the Council to make grants for street railway purposes, either with or without limitation as to time.

2: Whatever be the duration of a grant, whether limited or unlimited, it may be changed by contract between the City and the grantee of the right, subject only to the proviso now in force, that no grant shall be valid for more than twenty-five years.

3: Neither the consolidation of the street railway lines into one company and one system, nor the transfer obligations imposed by the Willson Avenue ordinance, operates to prolong the life of any prior grant.

4: An extension of the life of a grant by implication is not favored, and will not be declared, except when clearly manifest and obviously necessary; and this rule is invoked with especial propriety where the implication is sought to be made in ordinances, not one of which, in its title, gives the slightest intimation of a purpose to deal with the subject of the life of a grant.

5: Permission to extend tracks and operate them "in connection with the main line" for a period which endures longer than the right to operate the main line will not have the effect of ex-
136 tending the life of the main line grant.

6: The ordinance of March 10, 1890, authorizing the substitution of electricity for horse power on the Garden Street (Central Avenue) branch fixed a uniform period for the termination of the franchise of the Garden Street line over its entire length to Woodland Hills Avenue, and abrogated, by consent of both parties, any prior contract for a different date, if any such there was.

7: An "extension" is not a new route; it has no independent life; it depends upon, and is a part of, the line to which it is added; and, as it could have had no legal existence without the original line, so it can have no tenure of life beyond that of the original line.

8: The Garden Street Branch was established as a "route," and is an original line; the franchise to operate it, including all of its extensions and additional tracks, expired March 22, 1905.

The temporary injunction asked for will, therefore, be denied. A decree may be taken in accordance with this opinion, and it ought to be framed as if upon final hearing.

ROBERT W. TAYLER, *Judge.*

April 24, 1905.

(Endorsements on Opinion of the Court:) 6851. United States Circuit Court, Northern District of Ohio, Eastern Division. The Cleveland Electric Railway Company, Complainant, *vs.* The City of Cleveland and The Forest City Railway Company, Defendants. Opinion of the court. Filed Apr. 24, 1905. Irvin Belford, Clerk U. S. Circuit Court, N. D. O.

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(Notice of Motion.)

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

In Equity. # 6851.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendants.

Take notice that on Saturday, the 27th day of May, in the year 1905, the defendants will move said Court to enter a decree in the above entitled cause in accordance with its opinion filed herein on the 24th day of April, 1905, a copy of which decree is hereto annexed.

THE CITY OF CLEVELAND,
By NEWTON D. BAKER, *City Solicitor.*
THE FOREST CITY RAILWAY COMPANY,
By GARFIELD, HOWE & WESTENHAVER,
Its Attorneys.

Service of the foregoing notice is hereby accepted this — day of May, in the year 1905.

THE CLEVELAND ELECTRIC RAILWAY CO.,
By SQUIRE, SANDERS & DEMPSEY, *Its Attorneys*

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division. In Equity.

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No. 6851.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
v.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendants.

Order.

This cause came on to be heard on the plaintiff's Bill of Complaint and the amendment thereto heretofore filed, the separate answers of the defendants The City of Cleveland and The Forest City Railway

Company, and the separate amendments this day filed to each of said answers, the motion of the complainant for an injunction in accordance with the prayer of its bill and the amendment thereto, and on the resolutions and ordinances of the Council of the City of Cleveland and of the Trustees of the Township of East Cleveland and of the Council of the Village of East Cleveland filed in this cause and read at the hearing and was argued by Council.

Whereupon, the Court being fully advised in the premises, is of opinion and doth find that the rights and franchises of the complainant under and by virtue of the contracts pleaded as set forth in its bill of complaint and the amendment thereto expire with the 22nd day of March, in the year 1905, on the streets and avenues of the City of Cleveland commencing at the intersection of Prospect and Erie Streets in said City; thence southerly on, over and along Erie Street to Central Avenue; thence easterly, on, over and along Central Avenue to Lincoln Avenue; also commencing at the intersection of Quincy Street with Willson Avenue in said City; thence easterly on, over and along Quincy street to Woodland Hills Avenue, and that the ordinance of the City of Cleveland known as Ordinance # 42240 passed by the Common Council of said City on the 11th day of January, 1904, approved on the 20th day of January,
139 1904, and set forth in paragraph 28 of the complainant's Bill, does not impair any existing contract right between the said complainant and the City of Cleveland.

It is therefore adjudged, ordered and decreed by the Court that the motion for an injunction be denied, and that the complainant's bill be and the same is hereby dismissed, and that the defendants recover of and from the complainant their costs in this behalf expended, the same to be taxed by the Clerk of this Court.

(Endorsements on Notice of Motion:) No. 6851. U. S. Cir. Ct. North. Dist. of Ohio, Eastern Division. The Cleveland Electric Railway Company, Complainant, *v.* The City of Cleveland and The Forest City Railway Company, Defendants. Notice. Filed May 25, 1905. Irvin Belford, Clerk U. S. Circuit Court, N. D. O. Garfield, Howe & Westenhaver, Attorneys for Forest City Ry. Co.

140 (*Amendment to Answer of the City of Cleveland.*)

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division. In Equity.

No. 6851.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendants.

Amendment to Answer of the City of Cleveland.

Now comes the defendant, the City of Cleveland, and by leave of Court files this amendment to its original answer herein.

I.

This defendant denies the allegations of fact and of law set forth in the first paragraph of the amendment heretofore filed to the complainant's bill of complaint.

II.

This defendant denies that the lines of street railroad owned and operated by the complainant and set forth and described in paragraph II of the amendment to its bill of complaint were acquired by it by grant from the State of Ohio with the consent of this defendant. It also denies that prior to May 14, 1878, the East Cleveland Railroad Company received from the State of Ohio the right and privilege of maintaining and operating street railroads in the City of Cleveland and in the Village of East Cleveland by and with the consent of this defendant, and said Village, upon the streets named in said paragraph of said amendment.

III.

This defendant denies each and every allegation of the
141 third paragraph of the amendment to the complainant's bill.

IV.

This defendant further answering says that theretofore, to-wit on the 15th day of September, 1879, the Council of this defendant passed an ordinance entitled "An ordinance granting a renewal of the franchise to the East Cleveland Railroad Company to re-construct, maintain and operate its street railroad in and through certain streets of the City of Cleveland" and that by Section 1 of said ordinance the right was granted to the East Cleveland Railroad Company, its successors and assigns, to re-construct, maintain and operate its double tracks street railroad, with the necessary switches, turn-tables and turn-outs as previously constructed, and as then maintained and operated in the City of Cleveland, commencing on Superior Street at the intersection of Water Street; thence through Superior Street to and around the southwest corner of Monumental Square to Euclid Avenue; thence through said Avenue to Erie Street; thence through Erie Street to Prospect Street; thence through said Prospect Street to Case Avenue; thence through said Case Avenue to Euclid Avenue; thence through and along said Euclid Avenue to Willson Avenue; and that the right thereby granted and conferred was upon new and different conditions in many respects from the rights existing in the previous contracts and ordinances made between this defendant and the East Cleveland Railroad Company; that by Section 12 of said ordinance it was provided that the authority and privileges therein contained were to be and remain in force for the full period of twenty-five years from the 20th day of September, 1879, the said Company, its successors and assigns performing the several conditions by that ordinance required, and that the said East Cleveland Railroad Company accepted the terms

and conditions of said ordinance and reconstructed and continued to maintain and operate its double track street railroad on
142 the streets therein described according to the terms and conditions of said ordinance; by reason whereof the said ordinance became a binding contract, and the provision as to the expiration of the rights and privileges of said Company contained in said ordinance superseded any and all previous rights between said parties for the continued operation of said street railroad.

V.

And this defendant further says that on the 4th day of April, 1883, the Council of this defendant passed another ordinance entitled "An ordinance granting to The East Cleveland Railroad Company the right to extend, lay and operate its double track on Euclid Avenue from the west line of Willson Avenue to the east line of Fairmount Street upon the terms and conditions expressed in said ordinance; that among the rights and conditions expressed therein was that the right of said Company "to have and operate its said railroad on said Euclid Avenue between the west line of Willson Avenue and the city limits shall terminate on the 20th day of September, A. D. 1904, with the said renewal of that part of said Company's line lying west of said Willson Avenue;" that said ordinance and the conditions thereof were accepted by the said Company, and thereby became a binding contract between said Company and this defendant, and substituted the condition as to the expiration of the rights and privileges of said Company east of Willson Avenue as set forth therein for all previous existing rights between said parties.

VI.

This defendant further says that on the 22nd day of March, 1880, the Counsel of this defendant passed another ordinance entitled "An ordinance to permit the East Cleveland Railroad Company to extend the Garden Street branch of its railway," and that by said
143 ordinance the said Company was authorized and empowered to extend the Garden Street branch of its railway from the existing track at the intersection of Baden Avenue and Quincy Street in an easterly direction on and along said Quincy Street to the intersection of Lincoln Avenue, and to equip and operate said extension and its Garden Street branch for a period of twenty-five years from and after the passage of said ordinance; that said ordinance was accepted by the said Company, the extension thereby authorized was made, and the street railroad was operated and maintained in accordance with the terms and conditions of said ordinance, by means whereof the said ordinance became a new contract between the said East Cleveland Railroad Company and this defendant, and substitutes the provision therein contained as to the date of the expiration of the rights and privileges of the East Cleveland Railroad Company for its Garden Street branch for the terms and conditions as to the expiration of any previously existing ordinance or contract between said parties, whether obtained from the Council of this

defendant, the Trustees of East Cleveland Township, or the Council of the Village of East Cleveland, or from the State of Ohio previous to the 14th day of May, 1878, or at any other time.

VII.

And this defendant further says that on the 10th day of March, 1890, the council of this defendant passed another ordinance entitled "An ordinance granting The East Cleveland Railroad Company the right to substitute electric motive power for horse power upon its Garden Street branch;" that by said ordinance, the right was granted said Company to operate its Garden Street branch by electricity, "*i. e.* from the intersection of Prospect and Erie Streets along Erie Street to Ohio Street; along Ohio Street to Brownell Street, along Brownell Street to Garden Street, and along Garden Street to Quincy
144 Street, and along Quincy Street to Woodland Hills Avenue;" and that the authority thereby granted was to continue during the term of the present grant of said Company for its Garden Street branch, its present grant being the ordinance cited in the last paragraph; that this ordinance was accepted by said Company and electric motive power was substituted on said street railroad for animal power, and thereby said ordinance became and is a contract between said parties made upon a good and sufficient consideration and binding between them as to the date of expiration, and the date of expiration fixed therein being substituted for any date for any previous contracts or ordinances between said parties, no matter from what source the same was obtained nor by whom made.

This defendant says that the streets and avenues covered by the two ordinances last pleaded are those mentioned and described in the complainant's original Bill, and its contract rights upon which it is asserted are impaired by Ordinance No. 42240 set forth in Paragraph 18 of the complainant's original Bill.

This defendant, therefore, files this amendment to its original answer to meet the allegations of the amendment heretofore filed by the complainant to its Bill of Complaint, and it prays as in its original answer it has already prayed, to be hence dismissed with its reasonable costs in this behalf expended.

NEWTON D. BAKER,
Attorneys for Defendant.

THE STATE OF OHIO, *County of Cuyahoga, ss:*

Newton D. Baker being first duly sworn, says that he is the City Solicitor of the City of Cleveland, a municipal corporation of
145 the State of Ohio, and defendant in the foregoing action; that the allegations contained in the foregoing amendment to its answer are true as he verily believes.

NEWTON D. BAKER.

Sworn to before me by the said Newton D. Baker, and by him subscribed in my presence this 25 day of May, A. D. 1905.

WILLIAM A. CAREY,
[SEAL.] *Notary Public.*

Endorsements on Amendment to Answer of the City of Cleveland: In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division. In Equity No 6851. The Cleveland Electric Railway Company, Complainant, *vs.* The City of Cleveland and The Forest City Railway Company, Defendants Amendment to answer of the City of Cleveland Filed May 27, 1905. Irvin Belford, Clerk, U. S. Circuit Court, N. D. O. Newton D. Baker, Attorneys for City of Cleveland.

146 (*Amendment to Answer of The Forest City Railway Co.*)

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

6851. In Equity.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendants.

Amendment to Answer.

Now comes the defendant, The Forest City Railway Company, and by leave of Court files this its amendment to its original answer herein.

1. This defendant denies the allegations of fact and of law set forth in the first paragraph of the amendment heretofore filed to the complainant's bill of complaint.

2. This defendant denies that the lines of street railroad owned and operated by the complainant and set forth and described in paragraph "2" of the amendment to its bill of complaint were acquired by it by grant from the State of Ohio with the consent of the defendant; it also denies that prior to May 14, 1878, The East Cleveland Railroad Company received from the State of Ohio the right and privilege of maintaining and operating street railroads in the City of Cleveland and in the Village of East Cleveland by and with the consent of said City and Village upon the streets named in said paragraph of said amendment.

3. This defendant denies each and every allegation of the third paragraph of the amendment to the complainant's bill.

4. And this defendant further answering says that heretofore, to-wit: on the 15th day of September, 1879, the Common Council of the City of Cleveland passed an ordinance entitled "An
147 ordinance granting a renewal of a franchise to the East Cleveland Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the City of Cleveland," and that by Section I of said ordinance, the right was granted to The East Cleveland Railroad Company, its successors and assigns, to reconstruct, maintain and operate its double track

street railroad with the necessary switches, turn tables and turnouts as previously constructed and as then being maintained and operated in the City of Cleveland commencing on Superior Street at the intersection of Water Street; thence through Superior Street to and around the southwest corner of Monumental Square to Euclid Avenue; thence through said Avenue to Erie Street; thence through Erie Street to Prospect Street; thence through said Prospect Street to Case Avenue, thence through said Case Avenue to Euclid Avenue; thence through and along said Euclid Avenue to Willson Avenue; and that the right thereby granted and conferred was upon new and different conditions in many respects from those existing in the previous contracts and ordinances made between the City of Cleveland and The East Cleveland Railroad Company; that by Section 12 of said ordinance, it was provided that the authority and privileges therein contained were to be and remain in force for the full period of twenty-five years from the 20th day of September, 1879, the said Company, its successors and assigns performing the several conditions by this ordinance required; and that the said East Cleveland Railroad Company accepted the terms and conditions of said ordinance and reconstructed and continued to maintain and operate its double track street railroad on the streets therein described according to the terms and conditions of said ordinance; by reason whereof the said ordinance became a binding contract, and the pro-
vision as to the expiration of the rights and privileges of
148 said company contained in said ordinance superceded any and all previous rights between said parties for the continued operation of said street railroad.

5. And this defendant further says that on the 4th day of April, 1883, the Council of the City of Cleveland passed another ordinance entitled "An ordinance granting to The East Cleveland Railroad Company the right to extend, lay and operate its double track in Euclid Avenue from the west line of Willson Avenue to the east line of Fairmount Street;" that by Section I of said ordinance the right was granted to said Company to extend, lay and operate its double track on Euclid Avenue from the west line of Willson Avenue to the east line of Fairmount Street upon the terms and conditions expressed in said ordinance; that among the rights and conditions expressed therein was that the right of said Company "to have and operate its said railroad on said Euclid Avenue between the west line of Willson Avenue and the city limits shall terminate on the 20th day of September, A. D. 1904, with the said renewal of that part of said Company's line lying west of said Willson Avenue;" that said ordinance and the conditions thereof were accepted by the said Company, and thereby became a binding contract between the parties and substituted the condition as to the expiration of the rights and privileges of said Company east of Willson Avenue as set forth therein for all previous existing rights between said parties.

6. This defendant further says that on the 22nd day of March, 1880, the Council of the City of Cleveland, passed another ordinance entitled "An ordinance to permit the East Cleveland Railroad Com-

pany to extend the Garden street branch of its railway," and that by said ordinance the said Company was authorized and empowered to extend the Garden Street branch of its railway from the existing track at the intersection of Baden Avenue and Quincy Street in an easterly direction on and along said Quincy street to the intersection of Lincoln Avenue, and to equip and operate said extension and its Garden Street branch for a period of twenty-five years from and after the passage of said ordinance; that said ordinance was accepted by the said Company, the extension thereby authorized was made, and the street railroad was operated and maintained in accordance with the terms and conditions of said ordinance, by means whereof the said ordinance became a new contract between the said East Cleveland Railroad Company and the City of Cleveland and substitutes the provision therein contained as to the date of the expiration of the rights and privileges of The East Cleveland Railroad Company for its Garden Street branch for the terms and conditions as to the expiration of any previously existing ordinance or contract between said parties, whether obtained from the Council of the City of Cleveland, the Trustees of East Cleveland Township, or the Council of the Village of East Cleveland or from the State of Ohio previous to the 14th day of May, 1878, or at any other time.

7. And this defendant further says that on the 10th day of March, 1890, the Council of the City of Cleveland passed another ordinance entitled "An ordinance granting The East Cleveland Railroad Company the right to substitute electric motive power for horse power upon its Garden Street branch;" that by said ordinance, the right was granted said Company to operate its Garden Street branch by electricity "*i. e.* from the intersection of Prospect and Erie Streets, along Erie Street to Ohio Street, along Ohio Street to Brownell Street, along Brownell Street to Garden Street, and along Garden Street to Lincoln Avenue; also along New Street from Garden Street to Quincy Street, and along Quincy Street to Woodland Hills Avenue;" and that the authority thereby granted was to continue during the term of the present grant of said Company for its Garden Street branch, its present grant being the ordinance cited in the last paragraph; that this ordinance was accepted by said Company and electric motive power was substituted on said street railroad for animal power, and thereby said ordinance became and is a contract between said parties made upon a good and sufficient consideration and binding between them as to the date of expiration, and the date of expiration fixed therein being substituted for any date for any previous contracts or ordinances between said parties, no matter from what source the same was obtained nor by whom made.

This defendant says that the streets and avenues covered by the two ordinances last pleaded are those mentioned and described in the complainant's original Bill, and its contract rights upon which it is asserted are impaired by Ordinance # 42240 set forth in Paragraph 18 of the complainant's original bill.

This defendant, therefore, files this amendment to its original

answer to meet the allegations of the amendment heretofore filed by the complainant to its Bill of Complaint, and it prays as in its original answer it has already prayed, to be hence dismissed with its reasonable costs in this behalf expended.

GARFIELD, HOWE & WESTENHAVER,
Attorneys for Defendant.

STATE OF OHIO, *Cuyahoga County, ss:*

M. A. Fanning being first duly sworn says that he is the President of The Forest City Railway Company, a corporation, the defendant herein, and that the allegations contained in the foregoing amendment to its answer are true as he verily believes.

M. A. FANNING.

Taken, sworn to and subscribed before me this 25th day of May, A. D. 1905.

M. J. RUDOLPH,
[SEAL.] *Notary Public.*

151 (Endorsements:) No. 6851. U. S. Cir. Ct. North. Dist. of Ohio, Eastern Division. The Cleveland Electric Railway Company, Complainant, *v.* The City of Cleveland and The Forest City Railway Company, Defendants. Amendment to Answer. Filed May 27, 1905. Irvin Belford, Clerk U. S. Circuit Court, N. D. O. Garfield, Howe & Westenhaver, Attorneys for Forest City Ry. Co.

(*Motion of Complainant for Continuance.*)

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILWAY CO., Complainant,
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendants.

Motion of Complainant.

The complainant respectfully moves the court to continue this cause until the next term of this court, and thereafter until such time as there shall be a final determination in the litigation now pending wherein William M. Raynolds, a taxpayer on behalf of the City of Cleveland, is plaintiff, and the City of Cleveland and The Forest City Railway Company are defendants, in which litigation is involved the validity of the ordinance of the City of Cleveland known as ordinance No. 42240, passed January 11th, 1904, and set forth in the bill of complaint herein; and for cause, complainant shows:—

1. The complainant in this cause invokes the jurisdiction of the Court upon the ground that said ordinance of January 11th, 1904,

constitutes an impairment of the contract rights of the com-
152 plainant with the City of Cleveland, and the cause as made by the complainant involves the assumption that said ordinance of January 11th, 1904, is a valid legislative act of the City of Cleveland except insofar as it is an impairment of complainant's contract rights.

2. Since the filing of the bill herein and the ruling of the court denying the application for a temporary injunction, there has been finally adjudicated in the Court of Common Pleas of this county the action of William M. Raynolds a Taxpayer, *vs.* The City of Cleveland, and The Forest City Railway Company, wherein the said ordinance of January 11th, 1904, was attacked by said taxpayer upon the ground that it was passed by the City of Cleveland without authority of law and in contravention of the statutes in such cases made and provided; and judgment has been entered adjudging said ordinance void; and complainant submits, as part of this motion, the opinion of Lawrence, Judge of said Court of Common Pleas, filed in said cause.

3. The defendants herein, who are defendants in said suit of Raynolds, taxpayer, have given notice of their intention to appeal from the judgment of said Court of Common Pleas to the Circuit Court of said County, but as yet said appeal has not been perfected.

4. The complainant shows that, so long as the judgment so rendered in said Court of Common Pleas is in force, there is no ordinance of January 11th, 1904, as in complainant's bill alleged, and no ground remains upon which complainant can properly ask this court for the relief prayed for in this bill. If said judgment of the Court of Common Pleas shall be appealed from, the complainant shows that such appeal will be reached for hearing in the near future in the Circuit Court, and if in said Circuit Court the same judgment should be rendered as was rendered in said Court of Common Pleas, in such case there will be no ordinance remaining in force which would support the jurisdiction invoked by the complainant
153 herein and entitled it to make the question which it seeks herein to make.

5. If, pending the final determination of said suit in the State Courts, this cause should pass into final decree and complainant should seek to review the action of the Court on appeal, and, pending such appeal, it should be determined in said litigation in the state Courts that said ordinance of January 11th, 1904, was void for the reasons in said State Court proceeding alleged, and such situation were called to the attention of the Supreme Court where such appeal was pending, said court might and probably would decline to consider the question involved in said appeal upon the ground that the question presented was a moot cause and not an actual question involving the actual rights of the parties.

6. The complainant submits that the continuance of this cause until the validity of said ordinance is finally adjudicated in the State courts will preserve the rights of all parties in this litigation, whereas, the refusal of such order and to compel the complainant in the circumstances to proceed with the cause to final decree under the

ruling of this court as already announced, would be to compel the complainant, for the protection of its ultimate rights in the premises, to dismiss the bill in this cause, which it respectfully advises the court it will do if the court is of opinion that this application for a continuance should not be granted.

THE CLEVELAND ELECTRIC RAILWAY COMPANY.
By SQUIRE, SANDERS & DEMPSEY,
Solicitors for Complainant.

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No. 90622.

STATE OF OHIO, *Cuyahoga County.*

In the Court of Common Pleas.

WILLIAM M. RAYNOLDS, as a Taxpayer on Behalf of the City of Cleveland, Plaintiff,
vs.
THE CITY OF CLEVELAND ET AL., Defendants.

Opinion Rendered May 4, 1905. Lawrence, J.

THE STATE OF OHIO, *Cuyahoga County, ss:*

In the Court of Common Pleas.

No. 90622.

WILLIAM M. RAYNOLDS, as a Taxpayer on Behalf of the City of Cleveland, Plaintiff,
vs.
THE CITY OF CLEVELAND ET AL., Defendants.

Opinion Rendered May 4, 1905.

LAWRENCE, *J.:*

William M. Raynolds, a taxpayer of the City of Cleveland, brings this action on behalf of the said city, against the City of Cleveland, The Forest City Railway Company, and the members of the board of public service of said city, the solicitor of said city having failed and refused to bring the action after being requested, in writing, by the plaintiff so to do.

The object of the action is to enjoin the performance of a contract between said city and the defendant. The Forest City Railway Company, embodied in an ordinance passed by the Council of said city on the 11th day of January, 1904, and approved by the Mayor January 20, 1904, which purports to grant to The Forest City
155 Railway Company, its successors and assigns, the renewal right to maintain and operate a double track street railroad,

with the necessary equipment and appliances, in the following streets and parts of streets in said city, commencing at the intersection of Prospect and Erie Streets, thence southerly on Erie street to Central Avenue, and thence easterly on Central Avenue to Lincoln Avenue; also commencing at the intersection of Quincy Street with Willson Avenue, and thence easterly on Quincy Street to Woodland Hills Avenue, for the term of twenty years from and after the 22nd day of March, 1905.

This ordinance contains various recitals to the effect that the rights and franchises then possessed by The Cleveland Electric Railway Company to construct, maintain and operate an electric street railroad on the said streets and parts thereof would expire by limitation on the 22nd day of March, 1905; that the council of said city had the right to renew such rights and franchises at their expiration to such person or corporation and upon such terms and conditions as may be considered conducive to the public interests; that The Forest City Railway Company had made written application to the council for the renewal to it of such rights and franchises, upon the terms which are deemed by the council to be conducive to the public interests and the best terms that can be obtained therefor; and that The Cleveland Electric Railway Company, denying that its said rights and franchises would expire at the time named, declined to make any proposition for a renewal thereof.

The rights undertaken to be granted by said ordinance are to maintain and operate the existing street railroad in the streets mentioned, not to construct a new street railroad therein, and, amongst other terms and conditions, it is provided that "the grantee shall pay to the owner of the track, poles, wires and appliances
156 erected in the highways along the route herein described and constituting a part of the street railroad covered by this grant, the value thereof, to be agreed upon between the grantee and the owner thereof not later than December 22, 1904, together with twenty per cent. added to such valuation, provided that such valuation can, at or before December 22, 1904, be agreed upon between the said grantee and the said owner such payment to be made by the grantee on the 22nd day of March, 1905; but if the grantee is unable, on or before the 22nd day of December, 1904, to agree with the owner upon such valuation, then the grantee shall pay to the owner such sum as shall finally be adjudicated by a court of competent jurisdiction to be the value thereof, the same to be payable at the time such valuation is so adjudicated, and payment in either case to be made by the grantee in cash."

It is further provided that in case the said grantee fails to begin the operation of the street railway therein mentioned on the 23rd day of March, 1905, the council shall thereupon have the right to forfeit such grant, unless such failure or delay be due to legal proceedings or unavoidable cause.

Prior to the passage of said ordinance The Forest City Railway Company had no rights, grant or franchises of any kind to construct, maintain or operate a street railroad on any of said streets, or in any street crossing or intersecting the same, nor did it then or

does it now have any tracks, poles, wires or appliances in any of said streets, but all rights in that behalf theretofore granted by the council of said city were then held and possessed solely by The Cleveland Electric Railway Company.

It also appears that prior to the passage of said ordinance no action had been taken by the council to establish or define a street
157 railway route over and along the streets named, except such action in that behalf as had been had before the granting of the franchises and privileges held by The Cleveland Electric Railway Company. No public notice was given of any application for the construction of a street railroad in said streets, and no action inviting proposals for such purpose was had, nor was the written consent of any property holders on said streets or any of them obtained or produced to the council by The Forest City Railway Company prior to the passage of said ordinance of January 11, 1904. The only consents ever obtained for the construction of a street railroad in any of said streets, were those which were obtained, produced and filed with the council prior to the passage of the original ordinances granting the franchises and privileges owned and possessed by The Cleveland Electric Railway Company, at the time of the passage of said ordinance of January 11, 1904.

The plaintiff claims that the council had no authority or right to grant to The Forest City Railway Company any renewal right to maintain and operate a street railroad in any part of the streets named in said ordinance of January 11, 1904, and that said ordinance is illegal and void, both because the rights and franchises then possessed by The Cleveland Electric Railway Company were still in force, and unless abandoned by it, would remain in force until July 1, 1914, and because, in any event, there was no authority of law for granting to The Forest City Railway Company a renewal of rights not previously granted to it but which had been granted to another company and which were then held and possessed by The Cleveland Electric Railway Company.

The position of the defendants is that the franchises and privileges in said streets possessed by The Cleveland Electric Railway
158 Company expire on the 22nd day of March, 1905, and that it was within the power of the City Council to renew the same, at their expiration, either to the last named company or to a stranger to the original grants, without establishing a street railroad route, without inviting competitive bids and without obtaining the consents of any property owners.

There are a number of other questions connected with the two principal questions which I have indicated, but I do not deem it necessary to specially refer to them here.

Of these two principal questions I shall first consider the power of the council to renew a grant, at its expiration, to one who is a stranger thereto, for unless such power exists it is immaterial, for the purposes of this case, whether or not the rights and franchises of The Cleveland Electric Railway Company expire on March 22, 1905.

There is no dispute between the parties as to what steps are required to originally define and establish a street railroad route nor as to

the proceedings necessary for the construction of a street railroad in the first instance in pursuance of such establishment, or by way of an extension of existing tracks. It is conceded that nothing of this kind has been done here, and that the ordinance of January 11, 1904, is not valid unless the council had power, solely by way of a renewal, to grant to The Forest City Railway Company the franchises and privileges then possessed by The Cleveland Electric Railway Company by virtue of previous ordinances.

It has been suggested by Judge Hull of the Lucas County Circuit Court, in the case of Hattersley *v.* Waterville, 26 C. C. 226, that possibly our street railroad statutes, in view of recent decisions of the Supreme Court form a part of the great number of unconstitutional laws on our statute books, but this question was not decided in that case nor was it argued before me, and I shall consider
159 this case on the basis that these statutes are constitutional and valid.

In the opinion referred to, Judge Hull also expresses the view of himself and Judge Haynes that, regardless of the statutes relating to street railroads, it is within the general powers of a municipal corporation to permit the construction and operation of street railroads through its streets, and that the effect of these statutes is to restrict in some measure and regulate the power of the municipal corporation. I shall not stop, however, to examine the question of what would be the rule if we had no statutes specifically relating to street railroads, for it seems to me that the statutes on this subject are not only a limitation but a grant of power, which embraces the whole subject-matter of the construction, extension and operation of street railroads and the renewal of grants previously made.

The statute material here is section 2501 Revised Statutes, which is as follows:

"SEC. 2501. No corporation, individual or individuals shall perform any work in the construction of a street railroad, until application for leave is made to the council in writing, and the council by ordinance shall have granted permission, and prescribed the terms and conditions upon the manner in which the road shall be constructed and operated, and the streets and alleys which shall be used and occupied therefor, but the council may renew any such grant at its expiration upon such conditions as may be considered conducive to the public interest."

As has been observed, the council of the city of Cleveland did not attempt to grant to The Forest City Railway Company any right to construct a street railway on the streets mentioned. The authority to give to said company the right to maintain and operate the existing street railroad there constructed is claimed by virtue of the last clause of section 2501, which provides that the council may renew any such grant at its expiration upon such conditions as may be considered conducive to the public interest. It thus becomes important to determine what is meant by the terms "any such
160 grant" and also what is meant by the term "renew" as here used.

Evidently such grant has reference to the grant of permission both

to construct and operate a street railroad on the designated streets. A grant, however, is not the same as the thing granted. It is the act, whether by deed or other instrument or by governmental action whereby property or rights are transferred from the grantor to the grantee.

Anciently a grant was the method by the common law of transferring the property of incorporeal hereditaments or such things whereof no livery can be had.

2 Blackstone's Com., 317.

A grant is a contract executed. In its own nature it amounts to an extinguishment of the right of the grantor and implies a contract not to reassert that right.

Fletcher *v.* Peck, 6 Cranch 87 (135).

A number of definitions of the term are collected in the case of Toll Road Co. *v.* Edwards, 3 Colo. App. 74, among which are the following:

"Grant: An act evidenced by letters patent granting something from the King to a subject."

"Public grant is the mode and act of creating a title in an individual to lands which had previously belonged to the government."

It is essential to a valid grant that there be a grantee capable of holding, who must be either named or so described that he can be definitely ascertained.

Thomas *v.* Marshfield, 27 Mass., 364.

Jackson *v.* Corey, 8 Johns., 385.

A person who is not a party to a deed cannot take anything by it, unless it be by way of remainder.

Hombeck *v.* Westbrook, 9 Johns., 73.

In the case of the State *v.* Bell, 34 O. S. 194, it was held that under sections 411 and 412 of the Municipal Code of 1869,
161 a grant must be made by ordinance directly to a corporation or individuals to be named therein, and in the opinion it is said that there can, in such case, be no grant without a grantee expressly named therein.

In my opinion the term grant, as used in section 2501, comprehends not merely the franchise, which is the thing granted, but the grantor, to-wit: the public, and the grantee, to-wit: the individual or corporation to whom the permission is granted, and when the statute provides that the council may renew such grant at its expiration, it necessarily means the grant to the original grantee or its successors.

The word "renew" has been variously defined. In Carter *v.* The Brooklyn Life Insurance Co., 110 N. Y. 15 (22) the court says:

"To renew in its popular sense, is to refresh, revive or rehabilitate an expiring or declining subject, but is not appropriate to describe the making of a new contract or the creation of a new existence."

In Koehler *v.* Hussey, 57 S. W. (Ky.) 241, the court quote- with approval the following from Colebrook on Collateral Securities:

"The renewal of a negotiable bill or note representing the principal

indebtedness, for the payment of which collateral securities have been deposited does not affect the right of a creditor to retain or enforce the collateral securities, as a means of obtaining payment of the note or bill given in renewal, as in the case of the original evidence of indebtedness * * * the transaction is regarded simply as a prolongation of the original contract.

In Kollock *v.* Kaiser, 98 Wis. 104, it is held that a covenant to renew a lease implies the making of a new lease, but the court also hold that a general covenant in a lease to renew implies an additional term, upon the same terms, including that of rent, except the covenant to renew.

In Kedey *v.* Petty, 153 Ind. 179 (184), it is said:

"Renewed or renewal, as applied to promissory notes, in commercial and legal parlance, means something more than the substitution of another obligation for the old one. It means to
162 reestablish a particular contract for another period of time. It means to restore to its former conditions."

I do not, however, attach controlling importance to the use of the word "renew." It has been said to have no legal or strictly technical signification.

Russell *v.* Phillips, 14 Q. B. 892.
Flanagin *v.* Hambleton, 54 Md. 227.
Spinhaur *v.* Mallory, 21 Ind. App. 287.

If the word be applied to a subject matter of itself importing a new contract, I should be inclined to say that it was sufficiently flexible to admit of a construction consistent with such application, but when the subject matter is an existing executed contract between a particular grantor and a particular grantee, a renewal of that contract can only mean the revival or reestablishment thereof between the same parties of their privies for an additional period of time.

In this case, therefore, I am of the opinion that the council had no power to make the so-called renewal grant to The Forest City Railway Company of which complaint is made. The unreasonableness of any other view is well illustrated by the course which the city council took in attempting to grant to one company the franchise for a street railroad under the form of renewing a previous grant to another company. Evidently it was felt that to grant the right to construct a street railroad would make a new contract, and the only alternative was to undertake to transfer to the new company the tracks, poles, wires and appliances of the old company now in said streets, upon condition of paying the value thereof to the owner, to be agreed upon between the parties, together with twenty per cent. added to such valuation, but, if the parties, do not agree on or before December 22, 1904, then to pay to the owner such sum as shall finally be adjudicated by a court of competent jurisdiction to be the value thereof, the same to be payable at the time such valua-
163 tion is so adjudicated. This is plainly an attempt to appropriate private property without authority of law and without making compensation in advance, and if carried out would deprive the owner of its property without due process of law. In my

opinion the provision to that effect of itself makes the ordinance invalid, for without it the ordinance can not be operative.

Having, for the reasons already stated, reached the conclusion that the council had no power in any event, to grant to The Forest City Railway Company the renewal right to maintain and operate the existing street railroads in the streets mentioned and that said ordinance of January 11, 1904, purporting to make such grant is wholly void, it becomes unnecessary to consider the further question whether or not the franchise of The Cleveland Electric Railway Company on said streets expired on the 22nd day of March, 1905. As the last named company is not a party here and as the question of the date of the expiration of its said franchise is directly involved in litigation in the federal courts, to which said company is a party, it seems proper that this court should avoid that question, the determination of it not being necessary for the decision of this case.

As to the questions whether, in the event of the expiration of a grant to one company to construct, maintain and operate a street railroad in certain streets, the council can make a grant to another company of a franchise in the same streets, without proceedings to establish and define a street railroad route therein, and whether in the case of such grant it is necessary to obtain the consents of owners of property abutting on such streets, I also express no opinion, for these questions were not fully argued. I feel certain, however, that, if a new grant is made, it must be after public notice of the application, and to the corporation, individual or individuals, that
164 will agree to carry passengers at the lowest rates of fare.

An injunction will be allowed as prayed for in the amended petition.

(Endorsements on Motion:) No. 6851. The Cleveland Electric Railway Company, Plaintiff, *vs.* City of Cleveland and The Forest City Railway Co., Defendant. Motion of Complainant for continuance, &c. Filed May 27, 1905. Irvin Belford, Clerk. Squire, Sanders & Dempsey, Cleveland.

165 (*Order Denying Motion for Preliminary Injunction,*)

April Term, A. D. 1905, to wit: June 1, 1905.

Present: Honorable Robert W. Tayler, U. S. District Judge.

6851. Equity.

THE CLEVELAND ELECTRIC RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY.

The complainant having filed its Bill of Complaint and the amendment thereto, and the defendants, The City of Cleveland and The Forest City Railway Company, having filed their separate an-

swers and separate amendments to each of said answers, this cause came on to be heard on the motion of the complainant for a preliminary injunction, as prayed for in its Bill and the amendment thereto, and on the evidence, and was argued by counsel.

Whereupon, the Court, being fully advised in the premises, is of opinion to, and doth, adjudge, order and decree that said motion for a preliminary injunction be, and the same is hereby, denied.

And, on the request and the motion of said complainant, it is ordered by the Court, that leave be, and the same is, given to the complainant to file an amended bill in this cause on or before the first day of September next, and this cause is continued until the next term of this Court.

166 *(Order Continuing Cause.)*

April Term, A. D. 1905, to wit: October 2, 1905.

Present: Honorable Robert W. Tayler, U. S. District Judge.

6851. Chancery.

CLEVELAND ELECTRIC RY. CO.
vs.
CITY OF CLEVELAND, ET AL.

This cause is continued to the next term of this Court.

(Motion for Entry of a Final Decree, etc.)

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

No. 6851. In Equity.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendant.

Now come the defendants and move the Court to hear the above entitled cause and to enter a final decree therein in accordance with its opinion in this cause on the 24th day of April, 1905, a copy of which decree is hereto annexed.

This motion will be for hearing on Saturday, October 7th, 1905, at 9:30 o'clock A. M., or as soon thereafter as it may suit the convenience of the Court to hear the same.

THE CITY OF CLEVELAND,
By NEWTON D. BAKER, *City Solicitor.*
THE FOREST CITY RAILWAY COMPANY,
By GARFIELD, HOWE & WESTENHAVER,
Its Attorneys.

167 Service of the foregoing motion is hereby accepted this 2nd day of October, in the year 1905.

THE CLEVELAND ELECTRIC RAILWAY COMPANY,
By SQUIRE, SANDERS & DEMPSEY, *Its Attorneys.*

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

In Equity. No. 6851.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
v.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendants.

This cause came on to be finally heard this — day of October in the year 1905, on the papers and proceedings heretofore read and had herein, and was argued by Counsel.

Whereupon the Court being fully advised in the premises, is of opinion and doth find that the rights and franchises of the complainant under and by virtue of the contracts pleaded as set forth in its bill of complaint and the amendment thereto expire with the 22nd day of March, in the year 1905, on the streets and avenues of the City of Cleveland commencing at the intersection of Prospect and Erie Streets in said City; thence southerly on, over and along Erie Street to Central Avenue to Lincoln Avenue; also commencing at the intersection of Quincy Street with Willson Avenue in said City; thence easterly on, over and along Quincy Street to Woodland Hills Avenue, and that the ordinance of the City of Cleveland known as Ordinance # 42240 passed by the Common Council of said City on the 11th day of January, 1904, approved on the 20th day of January, 1904, and set forth in paragraph 28 of the
168 complainant's Bill, does not impair any existing contract right between the said complainant and the City of Cleveland.

It is therefore adjudged, ordered and decreed by the Court that the complainant's bill be and the same is hereby dismissed, and that the defendants recover of and from the complainant their costs in this behalf expended, the same to be taxed by the Clerk of this Court.

(Endorsements:) No. 6851. U. S. Cir. Ct. North. Dist. of Ohio, Eastern Division. The Cleveland Electric Railway Company, Complainant, *v.* The City of Cleveland and The Forest City Railway Company, Defendants. Motion for entry of a final decree. Filed Oct. 2, 1905. Irvin Belford, Clerk U. S. Circuit Court, N. D. O. Garfield, Howe & Westenhaver, Attorneys for ——.

(Order Granting Complainant Leave to File, etc.)

October Term, A. D. 1905, to wit: October 3rd, 1905.

Present: Honorable Robert W. Tayler, U. S. District Judge.

6851. Equity.

THE CLEVELAND ELECTRIC RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY.

In this cause on application of complainant by its solicitors leave is granted it to file its Amended Bill herein instanter which Amended Bill is accordingly filed.

169 *Amended Bill of Complaint.*

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division. In Equity.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendants.

Amended Bill of Complaint.

To the Honorable, the Judges of the Circuit Court of the United States for the Northern District of Ohio, Eastern Division:

The above-named complainant, The Cleveland Electric Railway Company, a corporation duly organized and existing under the laws of the state of Ohio, brings this its amended bill of complaint against the above-named defendants, the City of Cleveland, which is a municipal corporation of the state of Ohio, within said District, and The Forest City Railway Company, which is a corporation of the State of Ohio, having its principal office in said District; and says:—

I.

The complainant is a corporation organized and existing under the laws of the State of Ohio, owning and operating various lines of street railway in the City of Cleveland and vicinity, as in this amended bill hereinafter more particularly set forth.

II.

The defendant, the City of Cleveland, is a municipal corporation organized under the laws of the state of Ohio, and, as respects the

matters and things hereinafter set forth as to the ordinances
170 affecting this complainant, said defendant acts and has acted under delegated power from the legislature of the State of Ohio; and, so acting, has, by legislature enactment, made sundry contracts with your orator and its predecessors in interest under which it is now operating said lines of railway in the City of Cleveland; and, as respects certain portions of said lines, hereinafter described, the original rights of your orator for the operation of street railroads in the streets therein described were acquired from the Village of East Cleveland and the Township Trustees of the Township of East Cleveland, which, at the time of making such grants, were independent municipalities adjoining upon the east the territory then comprising the City of Cleveland; and thereafter, in October, 1872, the territory theretofore comprising the Village of East Cleveland and portions of the Township of East Cleveland were acquired by annexation and became part of the defendant, the City of Cleveland; and, by such annexation, and insofar as it included territory in which the predecessors of your orator were operating street railroads under grants from said Village of East Cleveland and said Township of East Cleveland, the annexation of such territory by the City of Cleveland in no wise affected the legal rights of the predecessor of your orator under its then existing contracts with the Village of East Cleveland and the Township Trustees of the Township of East Cleveland.

The defendant, The Forest City Railway Company, is a corporation organized under the laws of the state of Ohio for the purpose of constructing, maintaining, and operating lines of street railway in the City of Cleveland.

II.

That the amount in controversy in this action, which is a civil action, exceeds, exclusive of interest and costs the sum of five thousand dollars, and is a controversy arising under the Con-
171 stitution of the United States, in this;—that your orator seeks relief against the defendants in this amended bill by reason of an attempt on the part of the defendant to enforce against your orator a law of the State of Ohio impairing the contract rights of your orator and taking from it its property without due process of law, in contravention of and in violation of the Constitution of the United States.

III.

Your orator shows, by way of explanation and in order to avoid repetition in this bill, that "Garden Street," and "Ohio Street," as referred to in the several ordinances hereinafter mentioned, and otherwise referred to, were subsequently united under one name and designated "Central Avenue," which is the name by which said former Garden Street and Ohio Street are now known.

IV.

Your orator is a consolidated company organized in the year 1893, and was formed by the consolidation of the following-named constituent companies which, at and prior to the consolidation, owned and operated street railways in the City of Cleveland under ordinances duly passed by said municipality and accepted by said companies; and, by the terms of such consolidation and the force and effect thereof as provided by the statutes of Ohio, your orator became and is possessed of all the rights, franchises, privileges, and property, possessed by said constituent companies and each of them. The constituent companies so consolidated were as follows:

The East Cleveland Railroad Company, which was operating lines of street railway in said city described generally as the Prospect Street and Euclid Avenue line, together with the Wade Park Avenue, Cedar Avenue, and Garden Street, lines and various branches and extension thereof.

172 The Broadway & Newburgh Street Railroad Company, which was operating a line of street railway from Newburgh (at that time a southern suburb of the city of Cleveland) to the central part of the city.

The Brooklyn Street Railroad Company, which was then operating a line from Brooklyn (then a suburb of said city) and the so-called South Side of said City, to and through the Public Square, through Ontario Street and Scovill Avenue, to the southeasterly portion of the city.

The South Side Street Railroad Company, which was operating a line of railway from the South Side so-called, through Scranton and Jennings avenues.

And your orator shows that each of said companies, by the *the* consolidation of which your orator was formed, was operating under grants from the city of Cleveland authorizing the continued operation of said roads for a period of years, and no one of which grants expires before the first day of July, 1914.

V.

Your orator is also the owner, by purchase, of all and singular the lines of railway, rights, privileges and franchises, of The Cleveland City Railway Company; such lines of railway, rights, franchises and privileges, having been so acquired by your orator by purchase on or about July 1st, 1903. Said The Cleveland City Railway Company, the property of which was so purchased by your orator and of which it is the successor in interest as aforesaid, was a consolidated company formed by the consolidation of The Woodland Avenue & West Side Street Railroad Company and The Cleveland City Cable Railway Company, each of which companies was a corporation organized under the laws of the state of Ohio for the purpose of operating lines of street railway in the city of Cleveland; and,

173 at the time of such consolidation, The Woodland Avenue & West Side Street Railroad Company was operating lines of railway described generally as the Woodland Avenue Lines and the

West Side lines; and The Cleveland City Cable Railway Company was operating lines from the Public Square out Superior and St. Clair streets to the easterly limits of the city: None of the grants under which said The Cleveland City Cable Railway Company was operating expires before July, 1914.

VI.

The total mileage of single track which is operated by your orator, as the successor in interest of all of said various companies hereinbefore mentioned, is about 236 miles, of which the mileage of the lines described in the ordinance of the City of Cleveland passed January 11th, 1904, purporting to grant certain rights to defendant The Forest City Railway Company, and hereinafter more fully set forth, is about 12 miles.

VII.

Your orator's contracts with the City of Cleveland, growing out of said various consolidations and the obligations imposed by the various ordinances hereinafter referred to, require it to operate said entire system, and, as part thereof, to operate through cars over different portions of said lines, and to give transfers from one line to another, as defined in the ordinances of the city of Cleveland; and your orator shows that such obligations upon its part are continuing obligations, running to the expiration of its grant from the city of Cleveland, to-wit: in 1914.

VIII.

Of the lines of railway of which your orator is so the owner and now operating, the first was constructed by The East Cleveland Railroad Company. Said East Cleveland Railroad Company was
174 incorporated in the year 1859 under authority of the incorporation law then existing in the state of Ohio known as the act of May 1st, 1852; and on November 1st, 1859, July 3rd, 1860, and April 15th, 1862, said East Cleveland Railroad Company received the consent and permission of the city of Cleveland for the operation of a line of railway beginning at the easterly city limits at Willson Avenue; thence via Euclid Avenue, Case Avenue, Prospect Street, Erie Street, Euclid Avenue, to and around the southerly and westerly sides of the Public Square to and in Superior Street, and through Superior Street to Water Street. The consents which were so given by said City of Cleveland to the occupancy of said streets by said East Cleveland Railroad Company were for the period of twenty years from September 20th, 1859; and, under and in pursuance of such consents, and by authority of the charter of said company and the powers conferred by said Act of 1852, the lines of railway therein authorized were shortly thereafter constructed and put in operation, and constituted the Main Line of The East Cleveland Railroad Company.

IX.

On July 23rd, 1862, the said East Cleveland Railroad Company, in pursuance of its charter right to agree with the trustee- of East Cleveland Township, which township adjoined the City of Cleveland upon the East, for the occupancy by its railroad of streets within said township, acquired, by contract with the Trustees of East Cleveland Township, a right to construct and operate a street railroad in Euclid Avenue easterly from the intersection of Willson Avenue to Doan's Corners so-called, being now the corner of Euclid Avenue and Fairmount Street. Under said grant, the line of railway therein authorized was shortly thereafter constructed and put in operation as an extension of and part of the main line of said East Cleveland Railroad Company; so that upon the completion of said ex-
175 tension, the main line of said company was extended easterly from Willson Avenue to Doan's Corners so-called, now the Corner of Euclid Avenue and Fairmount Street; and as hereinbefore set forth, the territory, then part of the Township of East Cleveland, in the year 1872 became by annexation part of the City of Cleveland.

X.

Said main line of said East Cleveland Railroad Company having been constructed and put in operation under the contracts aforesaid between the City of Cleveland and said company and between the Township Trustees of East Cleveland Township and said company, on or about January 14th, 1868, the council of the city of Cleveland granted to said East Cleveland Railroad Company, by contract then duly executed between the parties, the right to operate a street railroad in connection with its main line and as an extension thereof, beginning at the intersection of Prospect and Brownell streets; thence along the center of Brownell Street to its intersection with Garden Street; thence easterly along the center of Garden Street to and across Willson Avenue, to the center of Willson Ave. the easterly boundary of the City of Cleveland. Said contract between said City of Cleveland and said East Cleveland Railroad Company to so construct such *such* extension of its main line out Garden Street as aforesaid was to continue, as therein expressed, during the period of twenty years from and after January 14th, 1868. And it was also in said contract provided that said East Cleveland company should have the right to continue to use and occupy the streets, avenues and public grounds, over which its main line was then constructed and operated, westerly from the junction of said road with the main line to its westerly terminus for the same period of time. And thereby your orator shows that it was agreed between the said East Cleveland Railroad Company and the City of Cleveland that said company should have the right to construct and operate said road upon Brownell and Garden streets in connection with its main line, and to continue the operation of said Garden
176 Street extension and its main line from Brownell and Prospect streets westerly in Prospect to Erie streets in Erie from Prospect Street to Euclid Avenue; in Euclid from Erie Street to and

around the southerly and westerly sides of the Public Square to Superior Street; thence westerly in Superior Street to Water Street. The grant or contract so made was duly accepted by said East Cleveland Railroad Company and the lines of railway therein authorized constructed and put in operation; and thereby your orator in pursuance of its chartered powers acquired directly from the State of Ohio, and by the permission and consent of the City of Cleveland, possessed and acquired the right to operate its said main line and extension thereof from Brownell Street to Garden Street and through Garden to the easterly limits of the City of Cleveland to January 14th, 1888, under the terms and conditions of said contract so made.

XI.

At the time of the construction of said Garden Street extension of said main line of the East Cleveland Railroad Company, a portion of the Village of East Cleveland which lay adjoining the easterly limits of the city of Cleveland, and is now, as hereinbefore set forth, part of such city, was without street railroad facilities upon Garden Street as it extended through said Village of East Cleveland; and on or about March 30th, 1868, the council of the Village of East Cleveland, being applied to by said East Cleveland Railroad Company to consent to the construction and operation by it of a line of street railroad upon Garden Street in said Village of East Cleveland as an extension of its line upon Garden Street, beginning at the easterly line of the City of Cleveland in Willson Avenue, and thence easterly to the center of Garden Street at its intersection with the center line of Baden Street, thence southerly in the center line
177 of Baden Street to the southerly line of Wade Street, by ordinance duly passed and accepted by said East Cleveland Railroad Company, consented to the construction and operation of the above described railroad upon Garden Street, and, by said ordinance, fixed various terms and conditions relating to the construction and operation of said line of street railroad. And your orator shows that it duly accepted said ordinance so passed by said Village of East Cleveland, and the Railroad therein authorized was constructed and put in operation. And your orator further shows that, in pursuance of its chartered powers and the statutes then existing and in such cases made and provided, it thereby acquired from said Village of East Cleveland the right to the continued operation of its street railroad therein and in the streets therein described for and during its corporate life; there being in said ordinance so passed by said Village of East Cleveland no limitation as to the duration of time during which said Village consented to the operation of said line of street railroad, whereby your orator acquired and still possesses the right, by contract between the said East Cleveland Railroad Company and the Village of East Cleveland, to maintain and operate, in connection with and as part of an extension of its main line, the lines of railroad so authorized by said Village of East Cleveland in said ordinance of March 30th, 1868. And your orator shows that, when the territory of the Village of East Cleveland, through which said East Cleveland Railroad Company so

acquired the right to operate its lines o railroad, was annexed to the City of Cleveland, such annexation co d not and did not impair or in any wise limit or affect the right wh. h the said East Cleveland Railroad Company then possessed to the continued operation of its railroad in said territory.

XII.

178 On or about August 2nd, 1870, the Village of East Cleveland made an agreement with the East Cleveland Railroad Company, by which the tracks of the latter were removed from the southerly side of Euclid Avenue in said Village to the center of said avenue, and in and by said agreement it was recited that said tracks "have been constructed and operated upon the southerly side of the carriage way of said Euclid Avenue, and being an extension or branch of its main line of road located in the city of Cleveland.

XIII.

On or about March 25th, 1873, the said East Cleveland Railroad Company and said City of Cleveland, desiring to have the Garden Street line of said East Cleveland Railroad Company connected with the main line at the intersection of Erie and Prospect Streets instead of as originally at the intersection of Prospect and Brownell streets, the City of Cleveland, by resolution duly accepted and acted upon by the said East Cleveland Railroad Company, granted permission to said company to lay a double-track street railroad from its main line at the intersection of Erie and Prospect Streets, through Erie to Ohio st. thence through Ohio to Garden Street, connecting with the Garden Street extension at this point as the same had originally been constructed; and requiring that the said company should, upon the completion of said tracks in Erie and Ohio Streets, take up and remove its tracks in Brownell Street from the main track in Prospect Street to Ohio Street, whereby, under authority of said resolution and the same having been carried out, the line of the Garden Street extension of such original main line was as follows; Intersecting the main line at Prospect and Erie streets; thence running through Erie Street to Ohio Street; thence through Ohio to Garden Street; thence through Garden to Baden Street; thence through
179 Baden to Quincy Street; and by virtue of the contract obligations and rights established by the acceptance of said resolution, the East Cleveland Railroad Company was required to operate said Garden Street extension in connection with said line, and over that portion of the main line beginning at the intersection of Erie and Prospect streets, continuing through Erie to Euclid Avenue, through Euclid to and around the Public Square to Superior Street, and in Superior to Water Street, as hereinbefore stated.

Your orator further shows that, in said resolution of March 25th, 1873, so authorizing the construction and operation of the part of said Garden Street extension in said resolution and in this paragraph described, there was no limit of time fixed by the council at which the right so granted or the consent so given should terminate or expire; whereby your orator shows that the said East Cleveland Rail-

road Company, by the acceptance of said resolution and the building and construction of the road therein authorized, acquired the right, during the life of its charter, to continue the operation of the line of road therein described.

And on the same day that said resolution in this paragraph described was so passed by the city council, it duly passed another resolution whereby it consented that the East Cleveland Railroad Company might lay a second or double-track in Garden Street between Brownell Street and Willson Avenue on the condition that in such new construction a five-inch or tram rail be used upon both of said tracks; which last mentioned resolution was duly accepted by said East Cleveland Railroad Company and the double-track street railroad therein authorized built and constructed, which construction involved the abond-ment of the original single track constructed on said street; whereby, by virtue of said two resolutions of March 25th, 1873, in this paragraph described, your orator shows that said East Cleveland Railroad Company received permission from said city of Cleveland to construct and operate *permission from*
180 *said City of Cleveland to construct and operate* a double-track street railroad from the intersection of Prospect and Erie streets through Erie to Ohio street, through Ohio to Garden Street, through Garden Street to Willson Avenue, and that, as respects the permission so given for a double-track between said points, there was not fixed by the city council any limit of time; and, by reason of such action on the part of said city council, the East Cleveland Railroad Company acquired, by virtue of its charter and said consent of the city, the right to continue the operation of said double-track during the existence of its charter. Whereby, under the authority of said resolutions and the same having been carried out, the line of the Garden Street extension of such original main line was as follows: Intersecting the main line at Prospect and Erie streets; thence running through Erie Street to Ohio Street; thence through Ohio to Garden Street; thence through Garden to Baden Street; thence through Baden to Quincy Street; and by virtue of the contract obligations and rights so established, the said East Cleveland Railroad was required to operate said Garden Street extension in connection with said main line and over that portion of the main line beginning at the intersection of Erie and Prospect Streets, continuing through Erie to Euclid Avenue, through Euclid to and around the public Square to Superior Street, and in Superior to Water Street, as hereinbefore stated; and your orator shows that by virtue of the said several contracts under which the said East Cleveland Railroad Company had so constructed its main line and said Garden Street extension thereof, it was required to operate said extension in connection with said main line, using a material portion thereof for the purpose of such operation.

181 XIV.

On or about May 23rd, 1876, an ordinance was duly passed by the council of the city of Cleveland and accepted by said East Cleveland Railroad Company, by which the said company was granted permis-

sion to extend its Garden Street line from the then easterly terminus thereof at Baden Street, along Baden to Quincy street, along Quincy to New Street, and along New to Garden Street, there to connect with the existing tracks upon Garden Street. And in and by said ordinance the said East Cleveland Railroad Company was required to equip and operate said Garden Street tracks as so extended in connection with and as part of its Garden Street extension and its main line of road, said main line being as hereinbefore set forth; whereby the said East Cleveland Railroad Company became obligated, as between it and the city, and acquired the right as between it and the City, to continue the operation of said Garden Street tracks as extended in connection with the main line of tracks of said East Cleveland Railroad Company. And in and by said ordinance it was provided that such rights were to continue for the period of twenty years whereby the said East Cleveland Railroad Company acquired the right, by express provision of said ordinance, to continue the operation of its entire system of main line and said Garden Street extension, and this extension of said Garden Street line, for the period of twenty years from May 23rd, 1876. And your orator shows that in said ordinance of May 23rd, 1876, is included territory, as respects part of which the said East Cleveland Railroad Company acquired its rights in the streets under the terms of its charter and by contract with the Village of East Cleveland, and in propetuity, and it as well includes certain portions of Garden Street, with respect to which the rights of said company were in the first instance acquired under
the terms of its charter and by contract with the city of Cleve-
182 land. And in and by said last-mentioned ordinance no reference is made to the rights of said East Cleveland Railroad Company as acquired from the Village of East Cleveland nor to the rights possessed by the company under contract with the city of Cleveland growing out of the acceptance of the resolutions of the city council of March 25th, 1873, hereinbefore set forth, and by which the city of Cleveland had consented that the said company might operate a double-track street railroad from the inter-section of Erie and Prospect streets through Erie, Ohio and Garden streets to Willson Avenue, without limitation of time for the duration of the right thereby granted; and the acceptance of said ordinance by the East Cleveland Railroad Company was without prejudice to the rights which it then possessed under its original contract with the Village of East Cleveland and the resolutions of the council of the City of Cleveland of March 25th, 1873.

XV.

On or about September 15th, 1879, the city council of the city of Cleveland passed another ordinance relating to the operation of lines of railroads of the said East Cleveland Railroad Company; said ordinance having been passed, as therein recited, by authority of an Act of the Legislature passed June 12th, 1879; and it being therein recited that the said East Cleveland Railroad Company then operated a street railroad in the city of Cleveland by virtue of a grant or permit previously obtained, and had made application in writing for

a renewal of such grant "and a permit to maintain and operate its said street railroad in and along the streets as heretofore and now located and operated, for the period of twenty-five years from and after the 20th day of September, 1879." And in the ordinance passed in response to such application, it was provided that the said East Cleveland Railroad Company, its successors and assigns, were
183 authorized to reconstruct, maintain and operate its double-track street railroad, with the necessary switches, turnouts and turntables, as theretofore constructed and then maintained and operated in the City of Cleveland. And in and by said ordinance portions of the streets of the city of Cleveland in which the said company had theretofore constructed and was then operating railroads were set forth, namely: The original main line of the company described from its westerly terminus commencing at the intersection of Water and Superior Streets; thence through Superior Street to and around the south and west roadways of Monumental Square to Euclid Avenue; thence through Euclid Avenue to Erie Street; thence through Erie Street to Prospect Street; thence through Prospect Street to Case Avenue; thence through Case Avenue to Euclid Avenue; thence through and along Euclid Avenue to Willson Avenue. But your orator shows and submits that said ordinance, in legal effect, granted to said East Cleveland Railroad Company the right to continue the operation of all of its lines of railroad theretofore constructed and in operation in Cleveland, including the main line which is in said ordinance described and the extension thereof which had been constructed upon Garden Street as hereinbefore set forth, and with respect to which extension the said East Cleveland Railroad Company was obligated to maintain and operate the same as part of and in connection with its main line until 1896. If the operation of said Garden Street line is to be controlled by the provisions of the ordinance of May 23rd, 1876; and if, as hereinbefore set forth, the portions of said line the right to operate which
184 was in the first instance derived from the Village of East Cleveland, and the portions of said line consented to by the resolutions of March 25th, 1873, are to be controlled by the provisions of the original contract between said Company and the Village of East Cleveland and its contract made with the city of Cleveland and its acceptance of said resolutions of March 25th, 1873, then it was obligated to maintain, and had the right to maintain and operate, its said Garden Street line in connection with its main line, in perpetuity; and, by the terms of said ordinance of September 20th, 1879, the said East Cleveland Railroad Company was authorized to continue the operation of its entire system for the period of twenty-five years from September 20th, 1879.

XVI.

On or about March 22nd, 1880, another ordinance was passed by the council of the City of Cleveland giving its consent to The East Cleveland Railroad Company for a further extension of its tracks in Garden Street which had been built and constructed under the various contracts between said company and the Village of East

Cleveland and the City of Cleveland, as hereinbefore set forth; and in and by said last mentioned ordinance the said East Cleveland Railroad Company was empowered to extend its Garden Street line from the intersection of Baden and Quincy streets in an easterly direction along Quincy Street to the intersection of Lincoln Avenue, and to equip and operate its said extension and its Garden Street line for the period of twenty-five years; which last mentioned ordinance was duly accepted by the East Cleveland Railroad Company and the extension therein authorized constructed and put in operation. And your orator shows that the right in said last mentioned ordinance granted is to equip and operate said extension and all of the Garden Street line; so that a portion of the line of rail-
185 road therein referred to includes the lines built or constructed under the contract between the East Cleveland Railroad Company and the Village of East Cleveland as well as portions of its line constructed under the permits and contracts hereinbefore set forth between said company and the city of Cleveland; and if the rights of said East Cleveland Company with respect to the operation of its said Garden Street line on March 22nd, 1880, became subject to the provisions of said last mentioned ordinance of that date, it was a right granted by the city of Cleveland to continue the operation of the lines until March 22nd, 1905; but your orator further shows that in and by said ordinance of March 22nd, 1880, no reference is made to the rights of said East Cleveland Railroad Company under its contract with the Village of East Cleveland nor as to its rights under contracts between it and the city of Cleveland by virtue of the resolutions of March 25th, 1873, hereinbefore set forth; and the acceptance by the said East Cleveland Railroad Company of said ordinance of March 22nd, 1880, was without prejudice to the rights which it then possessed derived from the Village of East Cleveland, under which its tracks were originally constructed in the year 1868, as hereinbefore set forth, and from the city of Cleveland under said resolutions of March 25th, 1873.

XVII.

On or about February 9th, 1885, the city council of the City of Cleveland passed another ordinance authorizing and empowering the East Cleveland Railroad Company to extend its Garden Street tracks; from the terminus of its then present track at the intersection of Quincy Street and Lincoln Avenue in an easterly direction on and along said Quincy Street to Woodland Hills Avenue, and to equip and operate said extension as a single-track railroad, with all necessary switches, turnouts and tur*b*-table, in connection
186 with its said Garden Street tracks and its main line; and in and by said ordinance providing that the grant therein made should terminate with the grant for the main line of the East Cleveland Railroad Company; which said ordinance so passed was duly accepted by said East Cleveland Railroad Company and the estension therein provided for built, equipped and put in operation, whereby your orator says that the city of Cleveland then agreed with the East Cleveland Railroad Company that said Company might continue the

operation of said extension of its Garden Street tracks in connection with the main line of said East Cleveland Railroad Company, and such right to terminate only with the grant for the operation of said main line; and your orator shows, as hereinbefore set forth, that the grant for the operation of the main line of said East Cleveland Railroad Company, insofar as it depended upon contract between said company and the city of Cleveland, did not expire prior to September 20th, 1904.

XVIII.

On or about June 17th, 1887, the council of the City of Cleveland passed another ordinance providing for the extension of tracks of the East Cleveland Railroad Company upon Garden Street; which ordinance was duly accepted by said company; the said extension thereby authorized being from the intersection of its then present track in Baden Street upon Garden Street, in an easterly direction along and upon Garden Street to the easterly line of Lincoln Avenue; and providing that the right to operate such extension should terminate with the grant for the Garden Street main line; and your orator shows, as hereinbefore set forth, that the grant for the Garden Street main line, insofar as the same had been constructed and put in operation under contract between the East Cleveland Railroad Company and the Village of East Cleveland in 1868, and insofar as the same had been constructed and put in operation under resolutions of the city council of Cleveland of March 25th, 1873, was a
187 grant terminating only with the corporate life of said East Cleveland Railroad Company, and insofar, if at all, as the termination of the right in Garden Street of the East Cleveland Railroad Company was controlled by ordinances of the City of Cleveland passed subsequent to March 25th, 1873, the rights upon Garden Street were co-extensive with the rights of said East Cleveland Railroad Company upon its main line, and did not terminate prior to September 20th, 1904.

XIX.

Thereafter on, July 13th, 1888, the city council of the City of Cleveland passed an ordinance granting to The East Cleveland Railroad Company the right to change its motive power upon certain portions of its line from horse power to electric power; and in and by said ordinance it was provided that in consideration of the large expenditures of money and of the improved facilities to be afforded the public upon said main and Cedar Avenue lines, the grant therein made should continue in force for a period of twenty-five years from and after the date of the passage of said ordinance. Your orator further shows that, in pursuance of such authority, the said East Cleveland Railroad Company did proceed, at large expense, to equip said portions of its lines in said ordinances mentioned with electricity, and has and did at all times, and your orator has since the acquisition of said lines at all times, complied with all and singular the conditions and requirements of said ordinance. And your orator shows that, under the terms of said last mentioned ordi-

nance, the said East Cleveland Railroad Company was only required to equip a portion of its lines with electricity, but it was
188 therein provided that upon request of the council, it should extend the electrical equipment over other portions of its lines. And thereafter on or about May 13th, 1889, the council by resolution required of said East Cleveland Railroad Company the extension of the electrical equipment over its original and main line from Willson Avenue through Euclid Avenue to Case Avenue, through Case to Prospect Street, through Prospect to Erie Street, through Erie to Euclid Avenue, through Euclid Avenue to and around the Public Square to Superior Street, and through Superior to Water Street; and also such portions of its Cedar Avenue extension as had not theretofore been equipped with electricity. And your orator shows that a portion of said tracks so described, to-wit: from the intersection of Prospect and Erie streets to Water Street, constituted part and parcel of the Garden Street lines as originally constructed, so that the grant to operate said main line of the East Cleveland road for the period of twenty-five years with electricity as well included a portion of the Garden Street lines between the termini above mentioned. And your orator shows that, by virtue of said ordinance of July 13th, 1888, the City of Cleveland expressly granted the right to operate by electricity the main line of the East Cleveland Railroad Company and a portion of its Garden Street line until the 13th day of July, 1913.

XX.

On or about March 10th, 1890, the city council of the City of Cleveland passed an ordinance authorizing the East Cleveland Railroad Company to substitute electric motive power for horse power upon its Garden Street extension of its main line, as herein-
189 before more particularly described, and in and by said ordinance providing that the right to operate said Garden Street extension of said main line should continue during the term of the company's then present grant for the operation of tracks upon the Garden Street extension. And your orator shows that, by reason of the various ordinances hereinbefore referred to, the East Cleveland Railroad Company then possessed the right to continue the operation of its tracks upon Garden Street as authorized by the Village of East Cleveland in 1869 and by the council of the City of Cleveland by resolutions of March 25th, 1873, during its corporate life, and that there had been express permission granted to the East Cleveland Railroad Company by the City of Cleveland to continue the operation of its tracks upon Garden Street and the extensions thereof up to the termination of the grant for the operation of the main line of the East Cleveland Railroad Company, and, as hereinbefore set forth, the right to operate the main line of said company, under the contracts then existing between it and the city of Cleveland, did not and do not expire prior to July 13th, 1913, whereby the said East Cleveland Railroad Company, by virtue of the ordinances hereinbefore set forth, and upon the acceptance of the same and the expenditure of large sums of money for the equipment of said Garden Street extension with electricity, acquired from the council of the

City of Cleveland the right to continue the operation of said Garden Street tracks and extensions by electricity until the 13th day of July, 1913; and which said grant was accepted by said The East Cleveland Railroad Company without prejudice to its rights upon Garden Street derived by contract with the Village of East Cleveland and contracts between said company and the city of Cleveland as hereinbefore set forth.

190 **XXI.**

On or about March 30th, 1891, the City Council of the City of Cleveland passed an ordinance, which was duly accepted by said East Cleveland Railroad Company, granting the right to said company to construct and operate a second or additional track in Central Avenue (formerly Garden Street) from the East Line of Willson Avenue to the right-of-way of the Cleveland and Pittsburg Railroad Company, and to connect said track so authorized with the tracks then in and upon Central Avenue at Willson Avenue and at the Cleveland and Pittsburgh railroad tracks; the said additional track therein provided for covering a distance of about 2400 feet; making the Garden Street line substantially a double-track system; and in and by said ordinance it was provided that the same should be accepted in writing by said railroad company, and that such acceptance should be deemed a contract on the part of said railroad company with said city to perform all and singular the matters and things in said ordinance required to be performed; and in and by said ordinance it was further provided that the right therein granted should be valid until the expiration of the grant of said company's main line. Your orator shows that, by force of this ordinance, which it alleges was duly accepted and has in all respects been complied with by it and its predecessor, the right was in express terms granted to said East Cleveland Railroad Company by the City of Cleveland to lay a double-track upon a portion of Central Avenue (formerly Garden Street) in said ordinance described, to be connected with its existing double track upon said avenue, to be operated as part of said system, and that the right to so operate should continue until the expiration of the grant for said company's main line; and your orator shows, as hereinbefore more specifically set forth, that the grants for the operation of the main line of said company,
191 insofar as they are controlled by ordinance of the city of Cleveland, did not and do not expire until the 13th day of July, 1913.

And your orator shows that said ordinance of March 30th, 1891, in this paragraph set forth, was passed by the city council under the express authority of the statutes of Ohio granting a continuing power to said council to fix the terms and conditions upon which street railways may be constructed, operated and extended; that, as appears by the provisions of said ordinance, the city at that time had in contemplation the paving of the roadway in that portion of Garden Street upon which this additional double-track construction was to be made, and required of the company in said ordinance that it should pave the space between the outer rails of said double-track with the same material and laid in the same manner as contemplated

by the city of Cleveland for the remainder of the roadway; and, in so fixing the terms and conditions upon which said double-track construction should be laid and the road thereafter operated, it was within the express power of the council and germane to the subject-matter upon which it was legislating, among other terms and conditions, to fix a time for the termination of the right to operate the road as so double-tracked under the terms of said ordinance, and that in pursuance of said power and for the purpose of securing for the city the additional paving obligations required of the company in said ordinance, it was provided as hereinbefore set forth, that the said line as so double-tracked might be operated by the company until the expiration of the company's grant for its main line, which, as above set forth, does not expire prior to the 13th day of July, 1913. And your orator shows that, having accepted said ordinance and built or constructed the double-track as therein contemplated and authorized, and put the same in operation as part of its
192 Garden Street lines, the said company did so without prejudice to or in any way impairing the right which it already possessed upon Garden Street as hereinbefore in this bill set forth.

XXII.

On or about April 20th, 1891, the city council of the City of Cleveland passed an ordinance granting to the East Cleveland Railroad Company permission to lay an additional or second track in Quincy Street from New Street to Woodland Hills Avenue, and authorizing said company to connect the tracks therein authorized with the tracks then laid upon New Street. Your orator shows that the permission so granted was permission to lay an additional or second track on part of the Garden Street extension of the main line of said company, and granted by the City Council of Cleveland in pursuance of the authority conferred upon it from time to time fix the terms and conditions of street railway operation; and it is in saod ordinance provided that "The right herein granted shall be valid until the expiration of the grants for said company's tracks in said Quincy Street east of Lincoln Avenue, to-wit: July 13, 1913;" whereby your orator shows that the city council, in the granting of permission to lay an additional or second track in Quincy Street, being a portion of the Garden Street extension, expressly provided that the permission then granted should be operative until July 13th, 1913; and your orator shows that the grants for said company's tracks in Quincy Street east of Lincoln Avenue, referred to in said ordinance, were in the first instance made by ordinance of February 9th, 1885, hereinbefore set forth, whereby a grant was made to said East Cleveland Railroad Company to so extend its Garden Street extension east of Lincoln Avenue, and wherein it was provided that said company should equip and operate said extension in connection with said main line, and that such grant should terminate with the grant for the main line; and, as hereinbefore set forth, your orator shows that the grant of said main
193 line did not and does not terminate until July 13, 1913.

XXIII.

On or about July 17th, 1893, the city council of the City of Cleveland passed an ordinance granting to your orator the successor of the East Cleveland Railroad Company, as hereinbefore set forth, permission to extend its double track street railroad from its then present track at the intersection of Erie and Prospect streets to the intersection of Prospect and Ontario streets, and thence by northerly curves connecting with its lines in Ontario Street; also to extend its tracks from the intersection of Seneca and Superior streets along Seneca Street to Lake Street; thence along Lake Street to Ontario Street, and thence along Ontario to the center of Monumental Square, connecting with the then present tracks in Ontario Street; and to construct and maintain such extensions and operate the same by electricity upon the terms and conditions in said ordinance mentioned; and, among other conditions of said ordinance, it was provided that the company should comply with and perform all the terms and conditions of the resolution adopted by the city council on the 29th day of May, 1893, in reference to the consolidation of the various companies forming your orator, as hereinbefore set forth. And in said ordinance it was also provided that the council should have the right at any time to require the company to operate its cars over the entire length of any of the lines or extensions of said constituent companies, in the same manner and between the same termini as cars were operated prior to the consolidation of said constituent companies into your orator; that the council might require night cars to be operated the entire length of any of the lines of the company at least hourly each way between midnight and six
194 o'clock A. M. daily; that the company should assume the expense of sprinkling in addition to that then required of it by existing ordinances; and that in consideration of the grant so made by the said council, the company agreed therein that all the terms and provisions of the section relating to additional burdens for sprinkling, etc. should apply to and be a condition of all the grants theretofore made by the council to said constituent companies or any of them; and in and by said ordinance it is provided that the grant therein made shall be in force until the 13th day of July, 1913. And your orator shows that said last mentioned ordinance relates to a portion of the line originally constructed as part of the Garden Street extension of the main line of the east Cleveland Railroad Company, and requires of your orator the operation of all its lines and tracks, including said Garden Street extension, over the lines of track provided for in said ordinance. And your orator further shows that said ordinance so providing for additional tracks was passed by the city council with special reference to the operation of cars upon the Garden Street extension, and that immediately upon the completion and equipment of said tracks for operation, all of the cars operated upon the Garden Street extension were required by the city to be operated upon tracks provided for in said last-mentioned ordinance and, by the terms of said ordinance, as hereinbefore set forth, the obligation to continue such operation and the right of the company so to operate it is provided shall continue until the 13th day of July, 1913.

XXIV.

Your orator further shows that, on February 19th, 1894, the city council of the City of Cleveland, determining it to be to the public interest to have established a cross-town line upon Willson Avenue, duly passed an ordinance entitled:

"An ordinance granting permission to The Cleveland Electric Railway Company and The Cleveland City Railway Company to extend their tracks in Willson avenue."

which said ordinance was duly accepted by both of the companies therein named.

195 By the terms of said ordinance the said companies were required to build and equip a double-track electric street railway along Willson Avenue from Broadway to the northerly terminus thereof; a portion of said railway to be built by your orator and the other portion of said railway to be built by The Cleveland City Railway Company. And in and by section 5 of said ordinance it was provided that the operation of cars on said railway by The Cleveland City Railway Company and by your orator shall be under the control and regulation of the council; and by section 6 of said ordinance it is provided, in substance, that passengers on any car operated or any part of said Willson Avenue, upon payment of one fare, shall be entitled to be transferred to any other line of either said The Cleveland Electric Railway Company (your orator) or said The Cleveland City Railway Company intersecting or coming to Willson Avenue, and with the additional right to transfer from such second line to a car or any other lines of the company operating the same which crosses the Cuyahoga River, and providing that passengers on any line of either of said companies intersecting or coming to Willson Avenue shall be entitled to transfer to Willson Avenue and have a continuous ride thereon. Section 7 of said ordinance requires the paving of the tracks and the space between the tracks and one foot outside of each outer rail; also requiring of the companies the widening of the roadway of said Willson Avenue between Euclid and Scovill avenues five feet on each side; which last-mentioned requirements were in addition to existing obligations with respect to paving and widening the street. And in and by section 10 of said Ordinance it is provided that said grant shall be in force until the first day of July, 1914.

And your orator further shows that the grants under which it was operating at the time of the passage of the last-mentioned

196 ordinance, as to some of its lines, expire on the first day of July, 1914, and that the obligations imposed upon your orator by virtue of said ordinance in this paragraph set forth are continuing obligations, requiring of your orator the performance of all and singular the conditions of said ordinance, including the issuing of transfers from its lines and accepting transfers from the Willson Avenue line, up to the first day of July, 1914. And your orator shows that Willson Avenue and the lines of road therein constructed are intersected by the Central Avenue (formerly Garden Street) and Quincy Street tracks constructed under the various ordinances hereinbefore set forth; and your orator submits that the council, as it

might lawfully do, did, by virtue of the ordinance of February 19th, 1894, require of your orator, in the operation of its said Central Avenue and Quincy Street tracks, to give and receive transfers from the Willson Avenue line, and that said Willson Avenue line and said other lines of your orator intersecting Willson Avenue should be so operated that passengers should have free transfers as between the Willson Avenue line and such intersecting lines, thereby subjecting your orator to such requirements; also granting to your orator the right to continue the operation of such entire system up to the first day of July, 1914. And your orator shows that unless it has the continued right to operate its Central Avenue and Quincy Street extensions until the first day of July, 1914, it cannot fulfill the obligations created and imposed nor exercise the right granted by said ordinance of February 19th, 1894; and your orator submits that, by virtue of said ordinance of February 19th, 1894, as respects said Central Avenue lines, the council of the City of Cleveland recognized the fact that your orator's right to operate therein did not expire prior to July 1st, 1914, and that if your orator's rights in such street, independently of the provisions of said ordinance of
197 February 19th, 1894, did expire prior to July 1st, 1914, then, by force of said last-mentioned ordinance and the rights thereby created and the obligations thereby imposed, your orator's right to continue the operation of said Central Avenue lines was lawfully extended to the first day of July, 1914.

XXV.

On June 25th, 1894, the city council of the City of Cleveland passed an ordinance, which was duly accepted and has at all times been complied with by your orator, granting to it the right to extend and operate its double track street railroad in Quincy Street from New Street to Willson Avenue; that the double-track street railroad which your orator was, at the time of the passage of this ordinance, operating in Quincy Street and therein referred to, was part of the Garden Street extension of the main line of the East Cleveland Railroad Company, and had been constructed and operated under the various ordinances hereinbefore ref-rred to; and in and by the provisions of said last mentioned ordinance your orator, as the successor in interest of said East Cleveland Railroad Company and the other companies forming your orator as a consolidated company, was granted permission to extend and operate by electricity its double-track street railroad from its then present tracks in Quincy Street westerly to Willson Avenue connecting by curves with the cross-town line upon Willson avenue as in this bill hereinbefore more particularly described; and in and by said ordinance it was provided that the right therein granted should terminate with the grant for the said company's then present line in Quincy Street; and your orator shows that by reason of the various ordinances and contracts hereinbefore referred to, the grant for said company's then present line in Quincy Street did not and does not expire prior to July 1st, 1914.

198 XXVI.

That prior to the consolidation which forms your orator, the East Cleveland Railroad Company, The Broadway & Newburgh Street Railroad Company, The Brooklyn Street Railroad Company, and The South Side Street Railroad Company, were operating independent lines of street railway in the city of Cleveland there being no interchange of traffic between said roads except that the said Brooklyn Street Railroad Company and the South Side Street Railroad Company were required to give and receive transfers to and from each other's lines at certain points; and the public was required, in patronizing any one of said lines and desiring passage on another, to pay an extra fare, with the exception hereinabove stated. And thereupon, on or about the 29th of May, 1893, the council of the City of Cleveland, by legislative enactment, prescribed the terms and conditions upon which said various companies last above named might be consolidated into your orator, and by the terms of such action, the city, through its council consented to such consolidation upon the condition that thereafter all of the lines of said different railroads should be operated by your orator as one system, and that only one fare should be charged for a continuous ride on or over any line of railway formerly owned by any one of said constituent companies and any line of any other of said constituent companies within the limits of the city of Cleveland; and also upon the condition that passengers or any of such lines paying one fare should be entitled, without extra or additional charge, to be transferred to any other of said lines and have a continuous ride thereon for such single fare, and requiring that your orator should, within ten days after the adoption of the resolution embodying such terms and conditions, file with the City Clerk in writing an acceptance of the terms and an agreement to perform the same. And thereafter, on or

199 about the same date, your orator in writing, as by said resolution required, duly accepted the terms and conditions prescribed in said resolution and agreed to perform the terms of the same. And since the completion of said consolidation your orator has operated all of the lines which theretofore belong to the constituent companies as one entire system, of which the former lines of The East Cleveland Railroad Company were a part; and in carrying out the terms and conditions so prescribed by said council as a condition precedent to said consolidation, your orator has united all of the lines formerly operated by said various companies in such manner as that many of the original lines, including the lines of track built as the Garden Street extension, have long since lost their identity as distinct lines of your orator's company; and your orator has been operating under the terms of said consolidation ordinance for one fare, and with a system of transfers, continuous lines of through cars over various parts of the system which were, before said consolidation, independent lines of said various railroad companies, and, by virtue of said consolidation, it became and was necessary that your orator, in carrying out the terms and conditions prescribed by the council, should establish such through car lines, and that if it should be deprived of the right to operate that portion of its present

system which was originally an extension of the main line of the East Cleveland Railroad Company upon Garden Street, it would be impracticable for it to carry out its agreement made with the city at the time of the consolidation with respect to the operation of all of its lines as one system, at one fare, and to give continuous rides and transfers thereover.

XXVII.

On or about the first day of July, 1903, your orator acquired by purchase, as hereinbefore set forth, all and singular the railroad, tracks, property, rights and franchises, of The Cleveland City
200 Railway Company, which was then operating various lines of railroad in competition with the lines then operated by your orator; and by virtue of its acquisition of said lines of The Cleveland City Railway Company it has again been required to establish additional through lines and through car service, so that it has resulted, and the situation now is, that by virtue of the statute in such cases made and provided, the tracks which were built upon Garden Street as part of an extension of the main line of the East Cleveland Railroad Company have now become part and parcel of a through system covering all of the street railway tracks in the City of Cleveland, being a total mileage of about 236 miles, and through car service is being given over said entire system, and the said Garden Street extension is not now, and has not been since its acquisition in 1893, treated by your orator or the city council or the public as having any identity separate and distinct from, but is and has been since said consolidation treated as an integral part of, the entire system of roads in operation by your orator, and that were your orator to be now deprived of the right to operate the tracks or any substantial part thereof built upon Garden Street (now Central Avenue) as an extension of the original main line of the East Cleveland Railroad Company, it would be impracticable for it to continue to operate the general system with through cars service and at one fare with transfers, which it is now conducting over such entire system so established as hereinbefore set forth.

XXVIII.

Your orator further shows that, notwithstanding its rights in the premises as hereinbefore set forth and the provisions of its several contracts with the City of Cleveland and in direct violation and impairment of the same, the defendant City of Cleveland, acting under delegated power from the State of Ohio, by action of its common council on the 11th day of January, 1904, without having
201 previously advertised any application for such grant, and without submitting the same in any manner to competitive bidding and without compliance or attempted compliance with the statutes relating to the granting of an original right to construct and operate a street railroad, as distinguished from the grant of a removal of an existing right, passed an ordinance in the words and figures following, to-wit:

202 *Ordinances.*

Ordinance No. 44240.

An ordinance granting to The Forest City Railway Company, its successors and assigns the renewal right to maintain and operate the existing street railroads in the following streets.

Commencing at the intersection of Prospect and Erie streets, in the City of Cleveland, State of Ohio; thence southerly on, over and along Erie Street to Central Avenue; thence easterly on, over and along Central avenue to Lincoln avenue; also commencing at the intersection of Quincy street with Willson Avenue in said city, thence westerly on, over and along Quincy Street to Woodland Hills avenue.

Whereas, certain rights and franchises of The Cleveland Electric Railway Company, its successors and assigns, to construct, maintain and operate an electric street railroad on, over and along the streets, avenues and parts thereof hereinafter described, expire by limitation at midnight on the 22nd day of March, 1905; and

Whereas the city council of the city of Cleveland, state of Ohio, has the right to renew such rights and franchises at their expiration, to such person or corporation, and upon such terms and conditions as may be considered conducive to the public interests; and

Whereas the Forest City Railway Company has presented and made in writing to the city council of the city of Cleveland, state of Ohio, an offer to maintain and operate a street railroad on, over and along the streets, avenues and parts thereof hereinafter described upon terms which are deemed by the council of the City of Cleveland, State of Ohio, to be conducive to the public interest, and which offer the council of the City of Cleveland, state of Ohio,
203 deems to be the best that can be obtained for a renewal of such grant to carry passengers upon a street railroad on, over and along said streets, avenues and parts thereof, hereinafter described; and,

Whereas, On the 28th day of December 1903, the Council of the City of Cleveland passed the following resolution numbered 44257, which was as follows:

Whereas, An application has been presented to this council for renewal for certain street railroad grants and privileges by The Forest City Railway Company, and Ordinance No. 44240 introduced in this Council granting to the said The Forest City Railway Company the privileges asked for in their said application; and

Whereas, Said Ordinance No. 44240 has been referred to the Committee on street railroads, Boards of Public Service, City Solicitor and Mayor; and

Whereas, The chairman of said street Railroad Committee has fixed Thursday, the 31st day of December, 1903, at three o'clock p. m. in Room 108, City Hall, as the time and place of the first meeting to consider said application and ordinance; now, therefore,

Resolved, That the City Clerk be and he is hereby directed to transmit to The Cleveland Electric Railway Company a copy of said application and said ordinance and a copy of this resolution,

together with an invitation to said The Cleveland Electric Railway Company to be present at said meeting, or any adjournments thereof, to participate in the deliberations of said committee and to offer any suggestions or propositions that they see fit to make, either to said Committee or to this council.

Pursuant to the passage of which said resolution Peter Witt, City Clerk, did notify The Cleveland, Electric Railway
204 Company of the passage and contents of said resolution, and did receive in reply from The Cleveland Electric Railway Company, the following letter:

CLEVELAND, *December* 30, 1903.

Peter Witt, City Clerk, City Hall, Cleveland.

DEAR SIR: We have received your communication of the 29th inst. addressed to The Cleveland Electric Railway Company, in which you enclose copies of resolutions Nos. 44258 and 44257 adopted by the council December 28th, 1903, and as directed by the Council, extending an invitation to this Company to be present at a meeting of the committee to which said resolutions have been referred, to participate in its deliberations.

We beg to advise the Committee and the City Council that the proposed ordinances to be considered by the committee, which purports to be ordinances to grant to the Forest City Railway Company the right to operate cars over portions of Woodland Avenue and Central Avenue, in which streets this Company is now operating, are ordinances which impair the existing contract right of this company. We are advised that it is not true, in law or in fact, as recited in said ordinances, that the franchises now owned by this company, under which it is operating, expire at the dates recited in said ordinances, but on the contrary, neither of the franchises under which this Company operates in Woodland Avenue and Central Avenue expire for some years to come. The franchises under which this company is operating in said streets are contracts between it and the City of Cleveland which cannot lawfully be impaired by subsequent ordinances of the city, and upon the faith of these contracts this company has invested large sums of money. The company will not in any way recognize the right of the council to impair its contract rights in the premises.

205 There are various other reasons why this proposed legislation could not be legally passed by the Council, but we deem it sufficient at this time to call your attention to the fact that you cannot impair contract rights in the mehod suggesed by these proposed ordinances.

Respectfully submitted,

THE CLEVELAND ELECTRIC RAILWAY CO.,
By HORACE E. ANDREWS, *President.*

To which said letter Charles A. Kohl, Chairman of the Committee on Street Railways, did, on the 1st day of January, 1904, reply by letter to the said The Cleveland Electric Railway Company, as follows:

JANUARY 1, 1904.

The Cleveland Electric Railway Company, Cleveland, Ohio.

GENTLEMEN: In your letter to the City Clerk answering the invitations in resolutions Nos. 44257 and 44258 adopted by the City Council of the City of Cleveland State of Ohio, December 28th 1903, you say:

"We are advised that it is not true in law or in fact as recited in said ordinances that the franchises now owned by this company, under which it is operating, expire at the dates recited in said ordinances, but, on the contrary, neither of the franchises under which this company operates in Woodland Avenue and Central Avenue expires for some years to come.

The Committee havi-g ordinances Nos. 44239 and 44240 under consideration—composed of the persons indicated in the resolutions before referred to—is anxious to avoid recommending any ordinance that will impair any contract obligations existing between your company and the City of Cleveland. The Committee has taken a recess until Monday, the 4th inst., ar 4.00 p. m. when they will again meet at room 108 City Hall for further deliberation on this subject.

206 The Committee is advised that the grants which ordinance No. 44239 proposes to renew, expire on the 20th day of September, 1904; and that the grants which ordinance No. 44240 proposes to renew expire on the 22nd day of March, 1905. Since your claim that the said grants expire at later dates, the Committee hereby requests specific information from you as to the title, date, and particular sections or parts of sections of ordinances or grants upon which you base your claims, and would like very much to have your answer in time to be considered at the Committee meeting on Monday afternoon.

The Committee also desires you to have your representatives present at the said meeting to present any views or suggestions that you may have to make upon the subject of the ordinances under consideration.

Very truly yours, CHARLES A. KOHL,
Chairman Committee on St. Railways.

And at a meeting of the Committee to which this ordinance was referred, held on the 4th day of January, 1904, Henry Davies, Esquire, Secretary of the Cleveland Electric Railway Company, was present and stated that Mr. Andrews, president of said Railway Company, was out of the City and that in his absence no one was authorized to speak for him but no answer was made by said The Cleveland Electric Railway Company to the letter of said Charles A. Kohl, and

Whereas, all necessary requirements with reference to a renewal of said grant aforesaid have been duly complied with:

Now therefore, be it ordained by the Council of the City of Cleveland, State of Ohio, that,

207 SECTION 1. The council of the City of Cleveland, State of Ohio, hereby renews and grants to The Forest City Railway

Company, its successors and assigns, hereinafter called the grantee, the right to maintain and operate a double track street railroad, with the necessary switches, turn-outs, turn-tables, poles trolley, feed and span wires, appliances, equipments, etc., and to maintain and operate the same on, over and along the following streets, avenues and parts thereof, commencing at the intersection of Prospect and Erie Streets, in the City of Cleveland, State of Ohio; thence southerly on, over and along Erie Street to Central Avenue; thence easterly on, over and along Central Avenue to Lincoln Avenue also commencing at the intersection of Quincy Street with Willson Avenue, in said City; thence easterly on, over and along Quincy street to Woodland Hills Avenue.

The rights herein granted in Erie Street are subject to the reserved right of the City of Cleveland to make further grants in said Erie Street with reference to the joint use of the tracks, poles, wires and other appliances and electric currents therein, upon such terms as the City of Cleveland may deem just and equitable.

SEC. 2. The motive power to be used by the said grantee in the maintenance and operation of said railroad shall be electricity. The railroad and its equipment shall be maintained and kept modern and first class, and to the satisfaction of the Board of Public Service.

SEC. 3. The right is hereby granted to said grantee, to erect the necessary poles and wires, and connect the necessary power houses with said street railroad wherever necessary.

SEC. 4. The rate of fare shall be three cents for each passenger carried, and said fare shall entitle the passenger to one continuous ride in the same general direction, and each passenger shall be entitled to one transfer ticket for passage on another line at all points of intersection or connection with other routes operated by the grantee, if such transfer be necessary to enable him to continue to his destination. The city reserves the right to regulate the issuance and use of transfers to carry out this provision, and also reserves the right from time to time to establish transfer points and require the exchange of free transfers at such points between the lines of the grantee hereof and other street railroad companies. Any child under six years years of age accompanied by a person paying fare, shall be carried free.

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SEC. 5. The city reserves the right to purchase any street railroad tracks, poles, wires, appliances or equipment owned or used by the grantee on the route herein described, whenever it may have the power to do so, for such price and upon such terms and conditions as may be agreed upon between it and the owner thereof, or upon their failure so to agree, then for such price and upon such terms as may be fixed by a board of arbitration, consisting of three persons, a majority of whom shall decide all questions.

SEC. 6. In case of arbitration in purchase of said street railroad, the City shall give at least six months' written notice of its intention so to arbitrate, and shall name therein one arbitrator. The owner shall name in writing, within thirty days thereafter, one arbitrator. The two within thirty days thereafter, shall agree upon the third arbitrator. On the failure on the part of the owner to name one arbitrator or on the failure of the two arbitrators to name the third,

the probate judge of Cuyahoga County may name either or both, as the case may be, upon the application of the city. In case of the death or disability of any one of the arbitrators, his place shall be filled in the manner provided for the making of his appointment.

SEC. 7. The value of said street railroad shall be obtained
209 as follows: The cost of reproduction shall be estimated and from this shall be taken a reasonable amount for depreciation. All the physical property of every nature used in the operation of the railroad shall be included in the valuation. Separate itemized schedules, with values, shall be made under the following titles:

1. Land.
2. Power houses, including buildings and machinery.
3. All buildings except power houses.
4. Tracks.
5. Street payments to the extent paid for by the grantee.
6. Rolling Stock.
7. Miscellaneous.

To this total valuation of the above items shall be added twenty (20) per cent., but in arriving at the said valuation the franchises and privileges granted by the city shall not be estimated or paid for.

SEC. 8. The City reserves the right to decline to take the property at the valuation fixed by arbitration as above provided, but in case of such declination no demand to purchase shall be made by the City within a period of two years thereafter.

SEC. 9. The City reserves the right to grant to any other party or parties the joint use not to exceed ten per cent. of the length of the route herein described, on such terms as may be fixed by the Council in case the parties do not agree but no such grant shall be made to any party who shall charge a higher rate of fare than the grantee.

SEC. 10. If at the expiration of this franchise no extension or renewal thereof be granted by the City to the then owner, and the City has not itself acquired the property then any party to whom a franchise may be granted over the within route and any extension thereof, shall have the right and be under obligation to purchase said railroad under the terms providing for the purchase by the City as herein contained.

210 SEC. 11. The grantee herein shall make known the true state and condition of the financial affairs of said railroad, and the City Auditor and his authorized agents shall have the right and be afforded the privilege at any and all reasonable times to examine any and all books of account, list of names of stockholders, showing their respective holdings in said company and shall be permitted to ascertain from said records and books the actual amount or amounts invested and the amount of capital stock issued the cost of the property, liabilities, assest, profits and losses, income, expenses and costs of the betterments.

SEC. 12. The maintenance and operation of the street railroad and the enjoyment of the privileges hereby granted, shall be subject to and governed by the general street railway ordinances now in force, except as the same are herein or hereafter modified, and shall be subject to the future ordinances and regulations of the Council.

SEC. 13. In case the said grantee fails to begin the operation of the street railway herein mentioned and described on the 23rd day of March, 1905, the Council of the City of Cleveland, State of Ohio, shall thereupon have the right to forfeit the grant herein made, excluding, however, any delays caused by *bona-fide* legal proceedings and other unavoidable delays over which the said grantee, has no control; but any delay or failure of the grantee to begin the operation of said railroad on the 23rd day of March, 1905, due to any legal proceedings or unavoidable cause preventing the same, and over which the grantee has no control, shall not be deemed by the council ground for forfeiture of this grant.

SEC. 14. The rights herein granted to the grantee are upon the express condition following: The grantee shall pay to the owner of the tracks, poles, wires, and appliances erected in the high-
211 ways along the route herein described, and constituting a part of the street railroad covered by this grant, the value thereof, to be agreed upon between the grantee and the owner thereof not later than December 22nd, 1904, together with twenty (20) per cent. added to such valuation, provided that such valuation can, at or before December 22nd, 1904, be agreed upon between the said grantee and the said owner, such payment to be made by the grantee on the 22nd day of March, 1905; but if the grantee is unable on or before the 22nd day of December, 1904, to agree with the owner upon such valuation, then the grantee shall pay to the owner such sum as shall finally be adjudicated by a court of competent jurisdiction to be the value thereof, the same to be payable at the time such valuation is so adjudicated, and payment in either case to be made by the grantee in cash.

SEC. 15. Whenever in the above ordinance the name of The Forest City Railway Company occurs, or wherever the said The Forest City Railway Company is described herein as the grantee, it shall be held and understood to mean and include the said The Forest City Railway Company, its successors and assigns, as fully as if the same were written out at length in each instance.

SEC. 16. The rights hereby granted shall expire on the 22nd day of March, 1925.

SEC. 17. This ordinance shall take effect and be in force from and after its passage and legal publication, and the acceptance in writing of the terms hereof by the said The Forest City Railway Company, its successors or assigns, within ten days after the passage hereof.

Passed Jan. 11, 1904.

C. W. LAPP,
President of the Council.

PETER WITT,
City Clerk.

Approved by the Mayor, Jan. 20, 1904.

212 And said The Forest City Railway Company accepted said ordinance and has given out in the public prints and otherwise that it is now the owner of and has the right, beginning on the

22nd day of March, 1905, to operate upon the streets in said ordinance described and which are now occupied by your orator, and to oust your orator from the possession thereof as in said ordinance provided; and, acting in pursuance of the terms of said last mentioned ordinance, the said The Forest City Raiway Company has made demand upon your orator to agree with it as to the value of the tracks, wires, poles and other appliances now owned by your orator in said streets, to the end that the same may be purchased by The Forest City Railway Company as in said ordinance provided; and your orator having declined to recognize in any manner the validity of said ordinance or to negotiate with reference to the value of its property as therein provided, The Forest City Railway Company has made formal application to the city council for the assistance of the City authorities in compelling your orator to abide by the provisions of said illegal ordinance. And in and by said formal application said The Forest City Railway Company has asked the city to proceed at the earliest practicable moment to adopt such proceedings as may be necessary to deliver possession to said The Forest City Railway Company of the streets and highways described in said ordinance and which are now occupied by your orator, as of right, as in this bill set forth, it is entitled to occupy them until the first day of July, 1914.

XXIX.

Your orator shows that said ordinance of January 11th, 1904, by which it is so sought to oust your orator from the right to continue the operation of its system of railroads upon the streets in said ordinance described, is void, because contrary to and in violation of the Constitution of the United States, in this,—that said ordinance is a law of the State of Ohio in direct violation and con-
213 travention and impairment of the contract obligations existing between your orator and the former Village of East Cleveland and the said defendant City of Cleveland, as in this amended bill hereinbefore set forth, and impairs the contract rights of your orator in this,—that whereas, your orator is entitled, by virtue of its said contracts in this bill set forth with the Village of East Cleveland and said City of Cleveland, to maintain and operate its said railway in all of the streets in said ordinance of January 11th, 1904, described, its rights, as respects no one of said streets expiring prior to July 1, 1914, the provisions of said ordinance oust your orator from the occupation of said streets and attempt to require the turning over of its property to said The Forest City Railway Company on or before the 22nd day of March, 1905.

And said ordinance of January 11th, 1904, is, as your orator submits, a law of the State of Ohio taking from the complainant its property without due process of law, in this, to-wit: That it is in said ordinance provided that the said defendant, The Forest City Railway Company, shall, unless your orator will sell to it its property upon an agreed valuation, take possession of all and singular its property used in the operation of its said road in the streets in said ordinance described, without any judicial process and without payment of any compensation to your orator therefor, and requires

of your orator the surrender and transfer of its property to said The Forest City Railway Company without compensation unless thereafter your orator, by judicial proceeding, is successful in recovering compensation for the value of the property which by said law of the State of Ohio the said The Forest City Railway Company is authorized to seize and take from the possession of your orator without its consent.

Your orator further shows that the passage of said ordinance of January 11th, 1904, is in furtherance of a combination and conspiracy between said defendant, The Forest City Railway
214 Company, and the municipal authorities of the City of Cleveland, for the avowed purpose, as frequently given out in the public prints by the municipal authorities, of depriving your orator of the right to operate in the streets in said ordinance described unless it shall submit to unreasonable requirements as to rates of fare with reference to its other lines of railway in the City of Cleveland, and with respect to other lines in regard to which it is not even claimed by the defendant city that its rights have terminated or will terminate in the near future; and your orator alleges that, unless restrained by the order of this Court, said The Forest City Railway Company and said City of Cleveland will proceed in accordance with the provisions of said ordinance, to compel your orator to transfer and surrender all and singular its property used in the operation of said roads in the streets in said ordinance described to said The Forest City Railway Company, and the abond-nment by your orator of the operation of its lines of street railroad in and upon the streets in said ordinance described; thereby depriving your orator of its property without due process of law and depriving it of the benefit of its existing contract rights, destroying the unity of its system and making it impossible to carry out the other existing contracts between it and the City with reference to carrying passengers upon the different lines of railway operated by it and established by the City of Cleveland; that the passage of said illegal ordinance and the contemplated and threatened enforcement of the same have created a cloud upon your orator's title to the right to operate its railways in the City of Cleveland, and have seriously impaired the market value of the obligations of your orator, both stock and bonds, now distributed and outstanding among hundreds of investors; that before it could at law demonstrate the invalidity of said ordinance, a multiplicity of suits would ensue and great inconvenience and conflict and trouble would arise over your orator's refusal to recognize the validity of said ordinance; that said ordinance having already by its terms gone into effect, and requiring your orator to take action looking to the fixing of a price upon its property and the turning over of the same to the defendant The Forest City Railway Company, your
215 orator will be compelled to submit to said ordinance or run the risk of the City of Cleveland, by its police force, taking possession of said property and ousting your orator from said streets; and, as your orator is informed and believes and alleges, it is the intention of the city authorities to enforce the terms of said ordinance and put The Forest City Railway Company in possession of said streets and of your orator's property, and oust your orator

therefrom, by physical force if necessary, unless it shall submit to the terms of said illegal ordinance.

Your orator submits that it is without adequate remedy at law in the premises, there being no proceeding known to the law by which your orator can, with safety to its investments and the continued and uninterrupted service to the public over its system of railways, and with reasonable promptness, determine the proper construction of the terms of all the contracts hereinbefore in this bill set forth and established the right, which it here asserts, to continue the operation of said lines until the right so to do is terminated as to this amended bill set forth; that only in a court of equity can the rights of your orator, and with justice to it and the public and with reasonable promptness, be adequately adjudicated; that the cloud existing upon your orator's title is a continuing and irreparable and serious damage to it in the management of its property; that the threat of the City of Cleveland to oust it from the said important and integral part of its system on the 22nd day of March, 1905, is a menace to its investment which not only in large measure destroys the value of its securities your orator with reference to future plans as to the operation of its property by way of improvement and
216 equipment, all of which are contemplated by your orator upon the faith of the validity of the right which it in this bill asserts to the continued operation of said lines of railway, and your orator submits that it has no adequate remedy at law against the enforcement of said ordinance.

In consideration whereof, and inasmuch as your orator is without adequate remedy at law in the premises, and can have adequate relief only in a court of equity,—to the end, therefore, that the defendants herein may answer the several matters hereinbefore set forth, and that this Court may decree that said ordinance of said defendant city entitled:

"Ordinance No. 42240.

An ordinance granting to The Forest City Railway Company, its successors and assigns, the renewal right to maintain and operate the existing street railroads in the following streets:"

passed January 11th, 1904, is null and void and of no effect as respects your orator,—

Your orator prays, that the City of Cleveland, the Mayor and Common Council of said City, and all officers, agents, attorneys, representatives, and departments of said City, and their respective agents, representatives and employés, and the City Solicitor of said City and his associates, assistants and agents, and the irrespective successors in office, and said The Forest City Railway Company, and its officers, agents, servants and employees, be perpetually enjoined, restrained and prohibited from putting said alleged ordinance into effect;

And from instituting or authorizing or directing any suit or suits, action or actions, or any proceeding against your orator, the object or purpose of which no relief sought by said action being to put

said alleged ordinance into effect or to enforce any of its
217 provisions, or to compel your orator to cease the operation of its existing lines of road upon the streets in said ordinance mentioned or any of them;

And from in any manner interfering, directly or indirectly, with the continued and peaceable occupany by your orator of the streets in said ordinance mentioned, for the operation of its lines of street railway therein as now conducted.

And that, upon final hearing, said ordinance may be by decree of this court adjudged to be null and void.

And your orator prays that, in the meantime and during the pendency of this suit, said City of Cleveland and the Mayor and Common Council, and all officers, agents, employés, representatives, and departments of said City, and said The Forest City Railway Company and its officers, agents, servants and employees, and each of them, be enjoined and restrained as hereinbefore prayed.

And that your orator may have such other and further relief as the nature of the case may require and as to the equity may appertain.

May it please your Honors to grant unto your orator a writ of subpœna, to be issued out of and under the seal of this Honorable Court, directed to the defendants, the City of Cleveland and The Forest City Railway Company commanding said defendants to appear in this Court at some day certain, to be therein named, and to answer the premises, but not under oath, answer under oath being expressly waived, and abide by and perform such decree as may be rendered herein.

THE CLEVELAND ELECTRIC RAILWAY COMPANY,
By SQUIRE, SANDERS & DEMPSEY,
Solicitors for Complainant.

218 THE STATE OF OHIO, *Cuyahoga County, ss:*

C. F. Emery, being duly sworn, says that he is Vice-President of The Cleveland Electric Railway Company, the complainant in the aforegoing amended bill of complaint; that he makes this affidavit as such officer on behalf of said Company; that he has read the said amended bill of complaint and knows the contents thereof; that the same is true to his own knowledge except as to the matters and things therein stated to be upon information and belief, and, as to such matters and things, he believes them to be true.

C. F. EMERY.

Sworn to and subscribed before me this 3rd day of October 1905.

CHARLES C. OWENS,
[SEAL.] *Notary Public.*

(Endorsements:) No. 6851. The Cleveland Electric Railway Company, Plaintiff *vs.* City of Cleveland and The Forest City Railway Company, Defendant. Amended bill of complaint. Filed Oct. 3, 1905. Irving Belford, Clerk U. S. Circuit Court, N. D. O. Squire, Sanders & Dempsey, Cleveland.

219 (*Answer.*)

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

No. 6851. In Equity.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendants.

Answer of the City of Cleveland, one of the Defendants in the above entitled cause, to the Amended Bill of Complaint of The Cleveland Electric Railway Company, filed against it and The Forest City Railway Company, in the Circuit Court of the United States for the Northern District of Ohio.

This defendant, now and at all times hereafter reserving to itself the benefit of all rights of demurrer and of objection to the amended bill filed herein for the many errors and insufficiencies therein, for answer thereto, and to so much thereof as this defendant is advised it is material and necessary for it to answer, answering says:

I.

This defendant admits that the complainant is a corporation organized and existing under the laws of the State of Ohio, and owning and operating various lines of street railway in the City of Cleveland, in the said State; that this defendant is a municipal corporation under the laws of the State of Ohio, and that the Forest City Railway Company is a corporation organized under the laws of the State of Ohio for the purpose of constructing, maintaining and operating lines of street railway in the said City of Cleveland.

II.

This defendant admits that this is a civil action and that the amount in controversy, exclusive of interest and costs, exceeds the sum of Five Thousand Dollars ($5000.00), but denies that this is a controversy arising under the constitution and laws of the
220 United States or that the complainant seeks relief against this defendant or The Forest City Railway Company by reason of an attempt on the part of the defendants, or either of them, to enforce against the complainant a law of the State of Ohio impairing any contract rights of the complainant, or depriving it of any of its property without due process of law in violation of any article of the constitution of the United States.

III.

This defendant admits that Garden Street and Ohio Street, as referred to in the several ordinances mentioned and pleaded in the

complainant's amended bill, and otherwise referred to therein, were subsequently united under one name and designated Central Avenue, by which name the said former Garden Street and Ohio Street are now known.

IV.

This defendant admits that the complainant is a consolidated company, organized in the year 1893, and that it was formed by the consolidation of certain constituent companies which, at the time and prior to such consolidation, owned and operated certain street railways in the City of Cleveland, and that by the terms of such consolidation and the force and effect thereof, as provided by law, the complainant became and is possessed of all the rights, franchises, privileges and property possessed by said constituent companies. But this defendant avers that the said consolidated company also became and is liable and subject to all the burdens, duties, liabilities and conditions of each of the said constituent companies, and of the franchises granted to said constituent companies, and each of them, by the Council of the City of Cleveland. This defendant also admits that the constituent companies, and the lines owned and operated by them which were acquired by the complainant by virtue of such consolidation, are substantially as set forth in paragraph IV of its amended bill, but this defendant denies that each of said constituent companies was operating under grants from this de-
221 fendant, no one of which will expire before the 1st day of July, 1914.

V.

This defendant denies that the complainant is the owner by purchase made on or about the 1st day of July, 1903, of all the lines of railway, rights and franchises then owned by The Cleveland City Railway Company; that the said The Cleveland City Railway Company was a consolidated company formed by the consolidation of the Woodland Avenue and West Side Street Railway Company and the Cleveland City Cable Railway Company; that at the time of such consolidation, which this defendant avers was the 11th day of May, 1893, the said the Woodland Avenue and West Side Street Railway Company was operating lines of railway described generally as the Woodland Avenue and West Side line, and that the Cleveland City Cable Railway Company was operating lines from the Public Square at Superior Street to the easterly limits of the City of Cleveland, but denies that none of the grants under which the said the Cleveland City Cable Railway Company was operating expired before July, 1914.

This defendant denies each and every other allegation or inference of fact or law set forth in paragraph V of the complainant's amended bill.

VI.

This defendant admits that the total mileage of single track which is operated by the complainant, as the successor in interest of all the

various constituent companies mentioned and described in the fourth and fifth paragraphs of its amended bill, is about two hundred and thirty-six miles, and that the mileage of lines described in the ordinance of the Council of the City of Cleveland passed on January 11, 1904, purporting to grant certain rights to the defendant, The Forest City Railway Company, and set forth in paragraph XVIII of the complainant's amended bill, is about twelve miles.

VII.

222 This defendant denies each and every allegation and inference of fact or law set forth in paragraph VII of the complainant's amended bill.

VIII.

This defendant admits that of the lines of street railway which the complainant now owns and is operating, the first was constructed by the East Cleveland Railroad Company, a corporation incorporated some time during the year 1859, under the incorporation law then existing in the State of Ohio known as the act of May 1, 1852, and that on the 1st day of November, 1859, and the 3rd day of July, 1860, and the 15th day of April, 1862, there were passed by the Council of the City of Cleveland certain ordinances or resolutions which were duly accepted by said company granting permission for the construction, maintenance and operation of a line of railway beginning at the easterly city limits at Willson Avenue, thence via Euclid Avenue, Case Avenue, Prospect Street, Erie Street and Euclid Avenue to and around the southerly and westerly sides of the Public Square to and in Superior Street, and through Superior Street to Water Street; and this defendant says that at the time each of said ordinances and resolutions were passed, there was in existence and in force, a general ordinance of this defendant subject to which said grants of permission were made, entitled:

"An ordinance prescribing the terms and conditions of Street passenger railways within the City of Cleveland"

duly and legally adopted on the 20th day of September, 1859, by the Council of this defendant, and that Section 13 thereof was as follows:

"No contract under the provisions of this ordinance shall be made for a longer period than twenty years from the date of the passage of this ordinance."

And this defendant further says that the resolution or ordi-
223 nance aforesaid, passed on November 1, 1859, and accepted by said company, provided as follows:

"Whereas, The East Cleveland Railroad Company in compliance with the provisions of an ordinance of the City of Cleveland, passed September 20th, 1859, entitled 'An ordinance prescribing the terms and conditions of street passenger railways within the City of Cleveland,' has obtained the requisite consent of the property owners and holders to lay their track on Prospect Street from its intersection with Erie Street to the Eastern terminus of said street, and from

the intersection of Euclid Street and Willson Avenue, southerly on said avenue to a point opposite the eastern terminus of Prospect Street upon the line indicated by said company in the published notice hereto attached; therefore,

Resolved, that said company is hereby authorized to build and construct said road on said line subject to all the provisions and requirements of said ordinance. Provided said railroad company shall commence said work by the first day of January, 1860, and complete the same by the first day of January, 1861, and this the license of said railroad company, shall continue for the full period of twenty (20) years from and after the 20th day of September, 1859, provided the said railroad company shall perform all and singular the conditions of the ordinance in relation to street railroads, passed Sept. 20th, 1859, together with all and singular the further and future orders of the Council in relation to said railroad, and it is expressly understood that if said railroad company shall neglect or refuse to perform upon their part as above stated, that this, their license shall cease. (Adopted Nov. 1st, 1859)."

And this defendant further says that the resolution aforesaid, passed July 3, 1860, provided as follows:

"Resolved that the East Cleveland Railroad Company shall be and is hereby permitted to continue their route already granted to them, and lay down and use a street passenger railway with the necessary turnouts from said Prospect Street in said City, commencing at its intersection with Erie Street, thence on and along Erie Street to Superior Street, thence on and along Superior Street to the Public Square, thence on and along the roadway around the north side of the Public Square to the center of Superior Street, subject to the terms and conditions and in accordance with the ordinance prescribing the terms and conditions of street railways, passed Sept. 20th, 1859, and the amendments thereto, and in accordance with the resolution permitting said East Cleveland Railroad Company, to use and occupy streets in said City, passed Nov. 1, 1859, and with the same rights and in accordance with the resolution relative to said route passed June 5, 1860."

And this defendant further says that the resolution aforesaid passed on the 15th day of April, 1862, contained in a similar provision making the same subject to the terms and conditions and in accordance with the ordinance prescribing the terms and conditions of street railways passed September 20, 1859, and was limited by the terms thereof to expire on the 20th day of September, 1879.

224 This defendant admits that under the several resolutions or grants as aforesaid, the lines of street railroad therein authorized were afterwards constructed, but this defendant denies each and every other allegation and inference of fact or law set forth in paragraph VIII of the complainant's amended bill not herein specifically admitted to be true.

IX.

This defendant admits that on the 9th day of August, 1862, not the 23rd day of July, 1862, as stated in the complainant's amended

bill, the trustees of East Cleveland Township passed a resolution and also an ordinance granting permission to said company to construct and operate a street railroad in Euclid Avenue easterly from the intersection of Willson Avenue to Doan's Corners, now the corner of Euclid Avenue and Fairmount Street, and that under said grant the line of railways therein authorized was thereafter constructed and put in operation as an extension of the line previously constructed by said company under authority of the ordinances and resolutions mentioned and described in paragraph VIII of the complainant's amended bill, and this defendant admits that the territory between Willson Avenue and Doan's Corners was annexed to and became a part of this defendant city in the year 1892.

This defendant denies each and every allegation and inference of fact or law except as herein admitted to be true — set forth in paragraph IX of the complainant's amended bill.

X.

This defendant admits that after the said the East Cleveland Railroad Company had constructed and put in operation its line of railway under the ordinances and resolutions set forth in paragraphs VIII and IX of complainant's amended bill, the Council of this defendant, on or about the 14th day of January, 1868, passed
225 an ordinance granting consent and leave to the said the East Cleveland Railroad Company to construct and operate a line of street railway

"from the intersection of Prospect and Brownell Street to connect with the main line of its railroad; thence along the center of said Brownell Street to its intersection with Garden Street; thence easterly along the center of Garden Street to and across Willson Avenue to the eastern boundary of said city;"

that said permission was given for a period of twenty years from and after the date of the passage of said ordinance, expiring January 14, 1888, and that the right during said period of twenty years from the date of said ordinance was also given

"to continue to use and occupy the streets, avenues and public grounds over which its main line is now constructed and operated westerly from the junction of said road with the main line to its western terminus."

This defendant denies that by said ordinance its Council granted permission to the East Cleveland Railroad Company to construct said line of railway as an extension of its existing tracks or lines, or any part thereof; but on the contrary avers that the grant was made after obtaining the consent in writing of the majority of the property owners and after advertising notice of application as required by statute, and to the person who would agree to carry passengers at the lowest rate of fare as an original grant for a new and separate railway route and line.

This defendant denies each and every other allegation and inference of fact or law not herein expressly admitted to be true as set forth in paragraph X of complainant's amended bill.

XI.

This defendant further admits that after the construction of the street railway in Garden Street, pursuant to the ordinance described in paragraph X of the complainant's amended bill, the Council of the Village of East Cleveland, which adjoined this defendant
226 on the east and is now a part of this defendant city, granted permission to the said the East Cleveland Railroad Company

"to construct, use and operate a street railroad as a branch of its railroad through and along the following streets in said village, to-wit: Beginning at the termination of its branch road at the easterly line of the City of Cleveland in Willson Avenue, running thence easterly in the center of Garden Street to its intersection with the center line of Baden Street; thence southerly on said center line to the southerly line of Baden Street,"

which grant was accepted by said company and the line thereby authorized was constructed and put in operation.

And this defendant avers that the resolution and preamble of the ordinance making such grant of permission provided as follows:

"Resolved by the Village Council of the Village of East Cleveland that the right is granted and the consent of the Village of East Cleveland is hereby given to The East Cleveland Street Railroad Company to construct a street railroad in the center of Baden Street commencing at the city line of the City of Cleveland on Willson Avenue running easterly to the center of Baden Street; thence southerly in the center of Baden Street to the southerly line of Wade Street with the necessary turnouts and switches and to operate the same for a period of twenty years from its completion, said construction to be commenced and completed within a period of five years from this date."

And this defendant avers that at the time said ordinance was passed, municipal corporations of the State of Ohio had authority in granting permission to street railway companies chartered by the State, to construct, maintain and operate lines of railway, to agree with said companies upon the terms and conditions upon which such grants of permission should be made, by reason whereof the period fixed for the expiration of said grant of permission in all of said ordinances and resolutions referred to in this answer are valid and binding upon the company to which the same were made.

And this defendant denies each and every other allegation and inference of fact or law not herein expressly admitted to be true, as set forth in paragraph XI of complainant's amended bill.

XII.

This defendant is not advised as to the agreement or *or*
227 the contents thereof made between the Village of East Cleveland and The East Cleveland Railroad Company on or about August 2, 1870, described in paragraph XII of the complainant's amended bill; and, therefore, denies each and every allegation of this paragraph of said bill.

XIII.

This defendant admits that on or about March 25, 1873, the Council of this defendant passed a resolution which was duly accepted by said Company whereby permission was granted to The East Cleveland Railroad Company

"to lay a double track street railroad in Ohio Street from their present track in Brownell Street to Erie Street, and in Erie Street from Ohio Street to Prospect Street to connect with the main track at this point;"

that as one of the conditions of said grant of permission it was provided:

"that said Company shall on completion of said tracks in Erie Street and Ohio Street to take up and remove the present track in Brownell Street from the main track in Prospect Street to Ohio Sreet, and shall put that portion of Brownell Street so abandoned in as good condition as it was when first occupied by them;"

and that the said East Cleveland Railroad Company, by virtue of said authority did construct a double track street railroad as therein provided as an extension of the tracks of its Garden Street branch and on the completion thereof did take up and remove the existing track in Brownell Street between Prospect and Ohio Streets.

And this defendant avers that said resolution of March 27, 1873, also contained the following provision:

"5. All ordinances of the City now in force or that may hereafter be enacted for the government and regulation of street railroads shall apply to this grant the same as to the other portions of said East Cleveland Railroad tracks."

And that as already set forth, Section XIII of the General Ordinances of this defendant, passed September 20, 1859, then in force and effect, relating to passenger street railways provided that no contract under the provisions of said ordinance shall be made
228 for a longer period than twenty years from the date of the passage of that ordinance.

This defendant denies each and every other allegation and inference of fact and law not herein expressly admitted to be true as set forth in paragraph XIII of complainant's amended bill.

XIV.

This defendant admits that on or about the 23rd day of May, 1876, an ordinance was duly passed by the Council of this defendant and accepted by The East Cleveland Railroad Company by which said Company was

"authorized and empowered to extend the Garden Street branch of its road to the easterly end thereof along Garden Street to Baden Avenue, and along Baden Avenue to Quincy Street and along Quincy Street to New Street, and along New Street to Garden Street, there to connect with the Garden Street track in connection with said branch and its main line; but with the express condition that no in-

crease of fare shall be charged by said company on any part of its said branch or of its main line or of said extension by reason of said extension."

This defendant denies each and every other allegation and inference of fact or law not herein expressly admitted to be true — set forth in paragraph XIV of the complainant's amended bill.

XV.

This defendant admits that on or about September 15, 1879, the Council of this defendant passed another ordinance entitled,

"An Ordinance granting a renewal of franchise to The East Cleveland Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the City of Cleveland;"

that said ordinance recited that it was passed by authority of an act of the legislature passed June 12, 1879; that it also recited that The East Cleveland Railroad Company was operating a street railroad in and through certain streets of the City of Cleveland under and by virtue of a grant previously obtained, and had made application in writing for a renewal of such grant for a period of twenty-five years from and after the 20th day of September, 1879; and the said ordinance authorized the East Cleveland Railroad Com-
229 pany,

"to reconstruct, maintain and operate its double track street railroad with the necessary switches, turn-tables and turnouts as heretofore constructed and now maintained and operated in the City of Cleveland commencing on Superior Street at the intersection of Water Street; thence through Superior to and around the southwest corner of Monumental Square to Euclid Avenue; thence through said Avenue to Erie Street; thence through Erie Street to Prospect Street; thence through said Prospect Street to Case Avenue; thence through said Case Avenue to Euclid Avenue; thence through and along said Euclid Avenue to Willson Avenue;"

and that the right thereby given, it was further provided, should "be and remain in force for the full period of twenty--five years from the 20th day of September, 1879."

This defendant denies that the Council of the City of Cleveland intended by said ordinance or that on any proper interpretation thereof that the same in legal effect granted to The East Cleveland Railroad Company the right to continue the operation of all its lines of railroad theretofore constructed and in operation in Cleveland or any part thereof other than that explicitly mentioned and described in the ordinance itself.

And this defendant further says that on the 4th day of April, 1883, Council of this defendant passed another ordinance, entitled,

"An Ordinance granting to The East Cleveland Railroad Company the right to extend, lay and operate its double track in Euclid Avenue from the west line of Willson Avenue to the east line of Fairmount Street."

That by Section 1 of said ordinance, the right was granted to said Company to extend, lay and operate its double track on Euclid Avenue from the west line of Willson Avenue to the east line of Fairmount Street, and upon the terms and conditions expressed in said ordinance; that among the terms and conditions expressed therein was one which provided that the right to have and operate its said railroad on said Euclid Avenue between the west line of Willson Avenue and the city limits, shall terminate on the 20th day of September, A. D. 1904, with the said renewal of that part of said company's lines lying west of Willson Avenue.

230 And this defendant avers that the ordinance herein referred to passed on September 15, 1879, and that passed on the 4th day of April, 1883, were passed pursuant to the authority of an act of the legislature of the State of Ohio passed June 13, 1879, which, among other things, provided:

"and any cities of the first and second grade of the first class may renew any such grant at its expiration upon such conditions as they may consider conducive to the public interests." (76 O. L. 157.)

That both of said renewal ordinances were made upon terms and conditions mutually agreed upon and considered by the Council of this defendant conducive to public interest, and were accepted by said Company. By reason whereof, this defendant avers that a new contract for the entire lines of street railway covered thereby was made between the parties which supersedes the antecedent contracts and grants, and measures and determines the respective rights and interests of the parties.

And this defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true — set forth in paragraph XV of complainant's amended bill.

XVI.

This defendant further admits that on or about the 22nd day of March, 1880, another ordinance was passed by the Council of this defendant and accepted by said company; that it authorized and empowered The East Cleveland Railroad Company

"to extend the Garden Street branch of its railway from the present track at the intersection of Baden Avenue and Quincy Street in an easterly direction on and around said Quincy Street to the intersection of Lincoln Avenue, and to equip and operate the said extension and its Garden Street branch for a period of twenty-five years from and after the passage of this ordinance."

And this defendant avers that the territory covered by this extension lies east of the line authorized by the resolution or ordinance of the Council of East Cleveland passed on or about the 30th day of March, 1868, and set forth and referred to in paragraph XI of the complainant's amended bill and of this answer, and that the

231 line of street railway authorized by said last mentioned resolution or ordinance of the Village of East Cleveland is included in and a part of the Garden Street branch of the

railway of The East Cleveland Railroad Company, the right to operate which, together with the residue of said Garden Street branch is, by the ordinance passed on the 22nd of March, 1860, renewed for a term of twenty-five years, all expiring on the 22nd day of March, 1905, and that said ordinance of March 22, 1880, was passed upon a good and sufficient consideration for the surrender and release of any rights and privileges previously owned by said company, and was made pursuant to the authority of the act of the legislature of the State of Ohio passed on the 12th of June, 1879, already cited; and that said railroad company accepted said ordinance of March 22, 1880, and availed itself of the benefits of the extension of tracks thereby authorized covering a distance of two or three additional miles; by reason whereof this defendant avers that the ordinance of March 22, 1880, became and is a valid and subsisting contract between this defendant and The East Cleveland Railroad Company whereby all antecedent rights of either party were merged and extinguished, and their rights thereafter are to be measurd and determined by said ordinance.

And this defendant avers that afterwards, to-wit, at the January term, 1891, of the Circuit Court of Cuyahoga County, that being the county within which the City of Cleveland is situated, a suit in *quo warranto* was instituted in the name of the State of Ohio at the relation of Hadden *vs.* the said The East Cleveland Railroad Company for the purpose of ousting the said The East Cleveland Railroad Company from the exercise of its rights and franchises on the lines of Streets covered by the ordinance of the 22nd of March, 1880; and it was therein adjudged and held by the Court that the passage of the ordinance of March 22, 1880, and the acceptance thereof by the said The East Cleveland Railroad Company was a surrender
232 by said company of all rights and franchises previously held by said company on said streets as of said date, and the making by the City of a renewal grant as of that date for said entire line of street railway for a term of twenty-five years; wherefore, this defendant says that the question of the expiration of all grants for said Garden Street branch made previous to the 22nd day of March, 1880, is *res adjudicata.* (State *vs.* East Cleveland Railroad Company, 6 C. C. 318. Affirmed by Supreme Court, 27 W. L. B. 64.)

And this defendant denies each and every other allegation and inference of fact or law not herein expressly admitted to be true — set forth in paragraph XVI of complainant's amended bill.

XVII.

This defendant admits that on or about February 9, 1885, the City Council of this defendant passed another ordinance which was accepted by said company entitled:

"An ordinance to permit The East Cleveland Railroad Company to extend the Garden Street branch of its railway;"

that it, by said ordinance, authorized and empowered The East Cleveland Railroad Company to extend

"the Garden Street branch of its railway from the termination of

its present track at the intersection of Quincy Street and Lincoln Avenue in an easterly direction on and along said Quincy Street to Woodland Hills Avenue and equip and operate said extension as a single track railroad with all necessary switches, turn-outs and turntables in connection with said branch and its main line and terminating with the grant for the main line."

This defendant avers that the words "said branch" as used by the Council in the language last quoted, means the Garden Street branch, and that the words "its main line" mean that line of street railway owned by The East Cleveland Railroad Company which was constructed and operated under and by virtue of the ordinances and grants set forth in paragraphs VIII and IX of the complainant's amended bill, and that on the 9th day of February, 1885, when the ordinance above quoted was passed, the termination of the
233 grant for said main line was — the 20th day of September in the year 1904; at which time the rights granted by the City of Cleveland on Quincy Street east of Lincoln Avenue were limited to expire.

This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true — set forth in paragraph XVII of the complainant's amended bill.

XVIII.

This defendant admits that on or about June 17, 1887, its Council passed another ordinance entitled:

"An ordinance to permit the East Cleveland Railroad Company to extend the Garden Street branch of its railway;"

that said ordinance was duly accepted by said Company; that it authorized and empowered said Company

"to extend the Garden Street branch of its railway from the intersection of its present track with Baden Avenue upon Garden Street in an easterly direction along and upon said Garden Street to the easterly line of Lincoln Avenue, and equip and operate said extension as a single or double track railroad * * * in connection with said branch and its main line, and terminating with the grant for the Garden Street maine line."

This defendant avers that the Garden Street main line within the meaning of the language of the ordinance as quoted above is the Garden Street branch or railway authorized by the ordinance passed July 14, 1868, as set forth in paragraph X of this answer, and as renewed and extended by the ordinance of this defendant passed on or about the 22nd day of March, 1880, set forth in paragraph XVI of this answer, and that the date fixed by the ordinance last mentioned for the termination of the grant for the Garden Street main line is the 22nd day of March, 1905.

This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true, set forth in paragraph XVIII of the complainant's amended bill.

XIX.

This defendant admits that on or about July 13, 1888, its
234 Council passed an ordinance granting to The East Cleveland Railroad Company the right to change its motive power upon certain portions of its lines from horse power to electric power.

This defendant avers that before said ordinance was passed, application was made to this defendant by the said The East Cleveland Railroad Company in May, 1888, in which application it is stated by said company

"that it is willing to afford convenient and rapid transit by the electric system upon the line of its roads on Euclid Avenue from Willson Avenue to the City limits, and on Cedar Avenue from The Cleveland and Pittsburg Railroad Company's tracks to a point about 1500 feet easterly from Fairmount Street;"

and permission was asked for "the right to substitute electric power on the routes above mentioned; that the ordinance passed in pursuance thereof is entitled:

"An ordinance granting to The East Cleveland Railroad Company the right to construct and operate an electric street railway on Euclid and Cedar Avenues;"

that said ordinance recites the communication from the street railroad company already set forth, and granted permission to said company

"to propel and operate the cars upon the following named streets in said city, to-wit, Euclid Avenue from Willson Avenue easterly to the city limits, Cedar Avenue from a point near The Cleveland and Pittsburg Railroad Company's right of way in said avenue easterly to a point about 1500 feet east of Fairmount Street;"

that the privilege thereby granted of constructing the electric system and the operation of its lines, it is provided,

"is granted in consideration of the improved facilities hereby contemplated and the large expenditure necessary to secure the same, and shall be in force for a period of twenty-five years from and after the date of the passage of this ordinance upon its main and Cedar Avenue lines;"

and it was further provided by Section VIII thereof that whenever the Counsel

"shall so require, the said company shall use the same system as herein provided on the entire length of their main and Cedar Avenue lines."

This defendant further admits that said ordinance was accepted by The East Cleveland Railroad Company; that the portions
235 of its main line of its Cedar Avenue line therein mentioned were equipped with electricity as set forth in said ordinance, and that on the 13th day of May, 1889, the Council of this defendant passed a further resolution pursuant to the authority and right reserved to it in Section VIII of said ordinance by which The East Cleveland Railroad Company was "authorized and required

as soon as practicable to extend the use of such motive power over its main and Cedar Avenue lines to the westerly termini thereof."

This defendant avers that in compliance with said resolution, the said The East Cleveland Railroad Company did extend the use of electricity over that part of its lines constructed and operated under and by virtue of the ordinances mentioned in paragraph VIII of the complainant's amended bill and known and designated in said ordinance passed July 13, 1888, and in said resolution adopted May 13, 1889, as its main line.

This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true, set forth in paragraph XIX of the complainant's amended bill.

XX.

This defendant admits that on or about March 10, 1890, its Council passed another ordinance which was accepted by said company authorizing it to substitute electrical motive power for horse power upon the Garden Street branch of its railway; that said ordinance is entitled:

"An ordinance granting to The East Cleveland Railroad Company the right to substitute electric motive power for horse power upon its Garden Street branch;"

that said ordinance authorized said company

"to operate its Garden Street branch by electricity, *i. e.*, from the intersection of Prospect Street and Erie Street, along Erie Street to Ohio Street; along Ohio Street to Brownell Street; along Brownell Street to Garden Street; and along Garden Street to Lincoln Avenue; also along New Street from Garden Street to Quincy Street and along Quincy Street to Woodland Hills Avenue."

236 And the right thereby given to erect and maintain on said streets poles and wires and the necessary appliances and fixtures for the purpose of operating and to operate electric motive power, it was expressly provided by said ordinance, should only continue

"during the term of its present grant for said Garden Street;"

which grant, the defendant avers, terminated the 22nd day of March, 1905.

This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true, set forth in paragraph XX of complainant's amended bill.

XXI.

This defendant admits that on or about the 30th day of March, 1891, its Council passed another ordinance which was duly accepted by said The East Cleveland Railroad Company granting the right to said company to construct and operate a second or additional track upon Central Avenue (formerly known as Garden Street) from the east line of Willson Avenue to the right of way of The Cleveland

and Pittsburg Railroad Company, and to connect said tracks so authorized with the tracks then in and upon Central Avenue at Willson Avenue and at The Cleveland and Pittsburg Railroad track; that said ordinance provided that it should be accepted by said company in writing and that such acceptance should be deemed a contract on the part of the said company with the City to perform all and singular the matters and things required to be performed in said ordinance, and that in and by said ordinance it was further provided,

"the right herein granted shall be valid until the expiration of the grants for the said company's main line."

This defendant admits that said ordinance was accepted in writing by said company, and the track thereby authorized was constructed and built, and the distance thereby covered is two thousand four hundred feet.

237 This defendant avers that the proper interpretation of the words "Company's main line" as used in said ordinance is its Garden Street main line to which the track thereby authorized was annexed as an extension, and that the same expires on the 22nd day of March, 1905; but this defendant avers that if the proper interpretation of the words "Company's main line" means the Euclid Avenue line authorized and constructed under and by virtue of the ordinances described in paragraphs VIII and IX of complainant's amended bill, and renewed by the ordinance passed September 15, 1879, and on which said Company was authorized to substitute electricity for animal motive power by the ordinance passed July 13, 1888, and recited in paragraph XIX of the complainant's amended bill and of this answer, then this defendant avers that it was not within the power of the Council in extending the track of the Garden Street branch to fix a different date for the expiration of such extension of track from that fixed in the ordinance making the original grant.

This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true, set forth in paragraph XXX of the complainant's amended bill.

XXII.

This defendant admits that on or about April 20, 1891, its council passed another ordinance granting to The East Cleveland Railroad Company permission to lay an additional or second track in Quincy Street from New Street to Woodland Hills Avenue and authorized said Company to connect said tracks with the tracks now laid upon New Street.

This defendant admits that said ordinance contained a provision as follows:

"The right herein granted shall be valid until the expiration of the grants for said company's tracks on said Quincy Street east of Lincoln Avenue, to-wit, July 13, 1913."

238 But this defendant avers that the grants for said company's tracks on said Quincy Street east of Lincoln Avenue are

contained in the ordinance passed February 9, 1885, recited in paragraph XVII of complainant's amended bill and of this answer, and by the terms of which the rights thereby granted expired either on the 22nd day of March, 1905, or on the 20th day of September, 1904, and this defendant avers that the correct date for the expiration of the grants for said company s tracks on Quincy Street east of Lincoln Avenue does, in law, control the erroneous recital thereof.

This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true, set forth in paragraph XXII of the complainant's amended bill.

XXIII.

This defendant admits that on or about the 17th day of July, 1893, its Council passed an ordinance granting to The Cleveland Electric Railway Company, the successor of The East Cleveland Railroad Company, permission to extend and operate its double track street railroad in Prospect Street from Erie to Ontario Street, and also to extend its tracks from the present tracks at the intersection of Superior and Seneca Streets; thence along Seneca Street to Lake Street; and thence along Lake Street to Ontario Street; and thence along Ontario Street to the center of Monumental Park connecting with the present tracks in Ontario Street; and also to construct and operate the same by electricity and that the right thereby granted on said streets shall be in force until the 13th day of July, 1913.

This defendant admits that among other conditions in said ordinance, it was provided that the company should comply with and perform all the terms and conditions of the resolution adopted by the City Council of this defendant, on the 29th day of May, 1893, in reference to the consolidation of the various companies forming the complainant; that it also provided that the Council should have the right at any time to require the Company to operate its cars over the entire length of any of the lines or extensions of said constituent companies in the same manner and between the same termini as cars were operated prior to the consolidation of said constituent companies, and that the Council might require night cars to be operated the entire length of each of the lines of the company at least hourly each way between midnight and six o'clock A. M., and that these provisions should apply and be a condition on each and all the grants made by the Council to said constituent companies or either of them.

239

This defendant admits that by said ordinance the company was required to sprinkle between the outer rails of its tracks including the space commonly known as the "devil's strip" on all street and street intersections wherein any tracks on any of the lines of said company are laid in a manner satisfactory to the Director of Public Works of this defendant; but this defendant denies that this requirement or any of the other requirements of said ordinance pleaded in paragraph XXIII of complainant's amended bill, and admitted in this answer were new conditions and burdens imposed by said ordinance on said complainant.

This defendant denies that any portion of the streets on which The Cleveland Electric Railway Company was authorized to extend its double track street railroad had been originally constructed as a part of the Garden Street railway or branch and denies also that said ordinance was passed with specific reference to the running of cars operated upon the completion and equipment of said tracks for operation, the Council of said City required all cars operated upon said Garden Street branch to be operated upon the tracks provided for by said ordinance.

240 This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true, set forth in paragraph XXIII of the complainant's amended bill.

XXIV.

This defendant further admits that on February 19, 1894, its council passed an ordinance entitled:

"An ordinance granting permission to The Cleveland Electric Railway Company, and The Cleveland City Railway Company to extend their tracks in Willson Avenue."

and that said ordinance was duly accepted by both of said companies; that by said ordinance, The Cleveland Electric Railway Company was granted permission to extend its double track street railroad on and along Willson Avenue from its present tracks at the intersection of Scovill and Willson Avenues to its present tracks at the intersection of Perkins and Willson Avenues, and from its present tracks, at the intersection of Hough and Willson Avenues to the Northerly terminus of said Willson Avenues; that permission was granted The Cleveland City Railway Company to extend its double track street railroad on and along said Willson Avenue from its present tracks at the intersection of Woodland and Willson Avenues to its present tracks at the intersection of Lexington and Willson Avenues, and from its present tracks at the intersection of Payne and Willson Avenues to the northerly terminus of said Willson avenue; that such extensions were to be constructed, maintained and operated in connection with the existing tracks in said Willson Avenue as a double track street railroad with electricity as a motive power. This defendant further admits that in and by Section V of said ordinance, it was provided that the operation of cars on said Willson Avenue by The Cleveland City Railway

241 Company and the complainant should be under control and regulation of the council, and that Section VI of said ordinance provides as follows:

"A passenger on any car operated on any part of said Willson Avenue, on the payment of one fare, either in cash or by ticket, shall be entitled without additional or extra charge, to be transferred to any other line of either of said companies intersecting or coming to said Willson Avenue, including the lines on Broadway, and to have a continuous ride thereon, with the right, without additional or extra charge, to be transferred from such second line to a car on

any other line of the company operating the same which crosses the Cuyahoga River, and passengers on any line of either of said companies intersecting or coming to said Willson Avenue, including the lines on Broadway, shall be entitled without additional or extra charge, to be transferred to said Willson Avenue line to have a continuous ride thereon."

This defendant further admits that Section VII of said ordinance requires the paving of the tracks and one foot outside of each rail on said Willson Avenue, and that the two companies were required to widen the roadway of said Willson Avenue between Euclid Avenue and Scovill Avenue five feet on each side, and that Section X of said ordinance provided that the grant thereby made should be in force until the first day of July, 1914.

This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true, set forth in paragraph XXIV of the complainant's amended bill.

XXV.

This defendant admits that or or about June 25, 1894, its Council passed an ordinance which was duly accepted by said company granting to the complainant the right to extend and operate its double track street railway, which, at the time of the passage of said ordinance, was being operated in Quincy Street and is therein referred to, was the Garden Street branch of the East Cleveland Railroad Company; and which had been constructed and op-
242 erated under the various ordinances herein referred to, and that the grant thereby made, it was expressly provided, shall terminate with the grant for said company's present line in Quincy Street, the date for the expiration of which is fixed by the ordinance as set forth in Paragraph XVII of this answer.

This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true, set forth in paragraph XXV. of the complainant's amended bill.

XXVI.

This defendant admits that on the 29th day of May, 1893, its Council passed a resolution consenting to the consolidation which had previously taken place of The East Cleveland Railroad Company, The Broadway and Newburg Railroad Company, The Brooklyn Street Railroad Company and the Southside Street Railroad Company, making the Complainant, The Cleveland Electric Railway Company.

This defendant avers that before the passage of said ordinance, The Cleveland Electric Railway Company addressed to the said Council a communication which is in words and figures following:

"CLEVELAND, OHIO, *May* 22, 1893.

To the Honorable City Council of the City of Cleveland:

GENTLEMEN: The Cleveland Electric Railway Company was organized on the 25th day of March, by the consolidation of The

East Cleveland Railway Company and the Broadway and Newburg Street Railway Company. Subsequently, it was further enlarged by consolidation on the 24th day of April, 1893, with it of the Brooklyn Street Railroad Company and the South Side Street Railroad Company. These two consolidations were made under advice of counsel and believed by the officers and stockholders of the respective companies to be legal and valid in all respects. Inasmuch as some question *deems* to have arisen as to the intention of the Cleveland Electric Railway Company, the company desires to state to you officially that it does not claim any rights greater than the constituent companies forming the organization; that it intends to obey all ordinances to which end each and all of the constituent companies were subject; that it has, since such consolidation has been effected, issued transfer checks to all persons desiring them, to enable such persons to have a continuous ride from any East
243 Side line to any south or West Side line, and from any South Side line of the Company to any East Side Line, for one fare, and will continue such system of transfers where it cannot better accommodate its patrons by such through lines as it may establish; that it disclaims all intention of charging more than one fare for any such continuous ride; and that its aim has been, and will be, to give its patrons vastly improved service and accommodation by reason of such consolidations.

Very respectfully,

THE CLEVELAND ELECTRIC RAILWAY COMPANY,
By HORACE E. ANDREWS, *Vice-President.*

This defendant avers that the resolution passed by the Council consenting to said consolidation is in words and figures following, to-wit:

Resolved, That the Council hereby consents to the consolidation of the East Cleveland Railroad Company, The Broadway and Newburgh Street Railroad Company, the Brooklyn Street Railroad Company and the South Side Street Railroad Company under the name of the Cleveland Electric Railway Company, under the following terms and conditions;

That only one fare shall be charged for a continuous ride on or over any line of railway formerly owned by any other or said constituent companies and any line of any other of said constituent companies within the limits of the City of Cleveland; and passengers on any of such lines paying one fare shall be entitled, without extra or additional charge, to be transferred to any other of said lines and have a continuous ride thereon for said single fare. The said The Cleveland Electric Railway Company shall within ten days after the adoption of this resolution, file with the City Clerk in writing, an acceptance of the terms and conditions herein and agreement to perform the same; otherwise this resolution shall be null and void."

244 This defendant admits that after the passage of said resolution, complainant accepted the same in writing, but denies

that the force and effect of such consolidation or of any of the other resolutions or ordinances pleaded in said amended bill or of any of the laws of the State of Ohio relating thereto is to confer upon the complainant the right to operate its system of street railways as an entire system granted to the complainant or any of its constituent companies at the time fixed by the ordinances and resolutions granting the same or that the force and effect thereof or of any ordinance authorizing an extension of track to be operated in connection with an existing line has the force and effect of extending the date for the expiration of any of the franchises of any of the constituent companies to the date of the last expiring franchise of any one of the companies going to make up said consolidated company or to any other or different date than that fixed in the ordinances granting the franchise.

And this defendant avers as to all of the alleged extensions of time for the expiration of said franchises whether asserted by reason of consolidations or extensions of track or the imposition of transfer privileges and other burdens that it is not competent for the Council of this defendant to extend thereby the date for the expiration of the franchise or to grant an extension of track to expire at a different date from that of the franchise under which the track was laid which is being extended.

And this defendant avers that afterwards, to-wit: on the 5th day of August, 1901, the Council of this defendant passed an ordinance granting to the complainant the right to extend and operate a single track street railroad from Euclid Avenue along the easterly side of the Public Square to Superior Street, and to connect the same with its existing tracks, which grant it was provided should expire on the 22nd day of March, 1905, unless it be sooner terminated
245 by the City, which grant was accepted by said company.

And this defendant further avers that afterwards, to-wit: on the 26th day of June, 1902, the Council of the City of Cleveland granted to the complainant the right to extend its double track street railroad on Erie Street from Euclid Avenue to St. Clair Street, and from Scovill Avenue to Woodland Avenue, and to connect such extension with the existing tracks of said complainant, which grant it is provided shall expire on the 22nd day of March, 1905, and which grant was accepted by said company.

This defendant denies each and every allegation and inference of fact and law not herein expressly admitted to be true, set forth in paragraph XXVI of the complainant's amended bill.

XXVII.

This defendant admits that on or about the first day of July, 1903, the complainant acquired by purchase all of the companies forming the consolidated company known as The Cleveland City Railway Company, but it denies each and every other allegation and inference of fact or law contained in paragraph XXVII of the complainant's amended bill not herein expressly admitted to be true.

This defendant admits that its counsel on the 11th day of January, 1904, passed an ordinance, No. 44240, in the words and

figures as set forth in paragraph XXVIII of complainant's amended bill; that the defendant, The Forest City Railway Company, has accepted said ordinance and that it claims that it is now the owner of and has the right, beginning from the 22nd day of March, 1905, to operate and maintain upon the streets described in said ordinance which are now occupied by the complainant, a street railway and to oust the complainant from the possession of said streets after the 22nd day of March; also that acting in pursuance of the terms of said ordinance, the said The Forest City Railway Company
246 made an effort to agree with the complainant as to the value of the tracks, wires, poles and other appliances in said streets to the end that said defendant might buy and pay for the same as provided for in said ordinance; also that the complainant has declined to negotiate with reference to the value of said property as therein described, or to vacate the streets on or after the 22nd day of March, 1905.

This defendant admits that after the failure and refusal of said complainant to negotiate with reference to the value of said property, a request was made of the City of Cleveland, by said The Forest City Railway Company, which is in the language as follows:

"The undersigned respectfully asks that the City of Cleveland proceed at the earliest practicable moment to have the value of said track, poles, wires and appliances erected in the highways along the route described in said ordinance adjudicated by a court of competent jurisdiction, and also to adopt such proceedings as may be necessary to deliver possession to the undersigned of the streets and highways described in said ordinance." (Signed by The Forest City Railway Company, M. A. Fanning.)

And this defendant further avers that after the receipt of said request, its Council adopted a resolution which is as follows:

"Resolved, that the communication of The Forest City Railway Company be referred to the City Solicitor to investigate the rights and powers of the City of Cleveland in the premises and with power to institute or cause to be instituted such proceedings, if any, as he may deem advisable to have adjudicated the value of the property described in Section XIV of Ordinance 44244, and to compel The Cleveland Electric Railway Company to surrender possession after March 22, 1905, of the streets and highways included in the street railway routes described in said ordinance."

247 And this defendant denies each and every other allegation and inference of fact or law not herein expressly admitted to be true, set forth in paragraph XXVIII of complainant's amended bill.

XXIX.

This defendant denies that said ordinance of January 11, 1904, is void because contrary to and in violation of the Constitution of the United States in that it is a law of the state of Ohio impairing any contract obligation existing between the complainant and the City of Cleveland, or that the complainant has any contract with respect to the streets covered by said ordinance which continues in force until January 1, 1914, or to any date subsequent to the 22nd day of March, 1905.

And this defendant further denies that said ordinance is void in that it is an attempt to deprive the complainant of its property or any part thereof without due process of law; and this defendant denies that said ordinance authorized, or that the defendant, The Forest City Railway Company has or ever had any intention to take possession of all of any of the property used by the complainant in the operation of street railway in the streets in said ordinance described except by agreement with and purchase from said complainant, or after the right so to do, and the compensation to be paid therefor had been ascertained and determined by a court of competent jurisdiction, and paid by said defendant.

This defendant denies that the passage of said ordinance of January 11th, 1904, is on the part of this defendant in furtherance of any action or conspiracy between the authorities of this defendant and The Forest City Railway Company, or any one else, for the purpose of depriving the complainant of its right to operate in the streets described in said ordinance unless it will submit to unreason-
248 able requirements as to its rates of fare on its other lines of railway in this defendant city, but this defendant avers that the defendant, The Forest City Railway Company applied for and obtained said ordinance in good faith, and that this defendant, The City of Cleveland, in due conformity to all the provisions and requirements of law, did make and pass said ordinance in good faith to protect the public interests of this defendant and the inhabitants thereof, to bring about a substantial reduction in the rates of fare charged for services rendered by the operation of the street railway upon the streets in said ordinance recited, and upon other terms and conditions in said ordinance appearing, considered by the Council of this defendant conducive to the public interest.

And this defendant admits that it is its intention to enforce the terms of said ordinance and to put the defendant, The Forest City Railway Company in possession of said streets, and to oust the complainant therefrom, and to enforce against the defendant, The Forest City Railway Company a full compliance with all the obligations undertaken by it to be performed by the acceptance of said ordinance, and will require the said The Forest City Railway Company to maintain and operate the lines of street railway required therein to carry passengers at the rates of fare therein prescribed, and to carry out all and singular the other provisions, stipulations, agreements, obligations and covenants of said ordinance; but this defendant denies that by so doing it will deprive the complainant of the benefit of any existing contract rights, or that it will impair any contract existing between it and the complainant or that make it impossible for the complainant to carry out other existing contracts with this defendant according to the true tenor, intent and effect
249 thereof.

This defendant further denies that before the complainant could at law contest the validity of the said ordinance a multiplicity of suits would ensue, or that great inconvenience and conflict and trouble would arise from complainant's refusal to recognize the validity of said ordinance, or that any of the property would be taken

without due process of law, or that by reason of anything alleged in the complainant's amended bill it is without adequate remedy at law.

This defendant denies all the allegations and inferences of fact and law contained in paragraph XXIX of complainant's amended bill not herein expressly admitted to be true.

And having fully answered the amended bill of complaint filed against it herein, this defendant prays to be dismissed hence with its reasonable costs in this behalf expended.

THE CITY OF CLEVELAND,
By NEWTON D. BAKER,
Its Attorneys.

THE STATE OF OHIO, *County of Cuyahoga, ss:*

Newton D. Baker being first duly sworn, deposes and says that he is the duly elected and qualified City Solicitor of the City of Cleveland, defendant in the foregoing action; that the facts statements and allegations contained in the foregoing answer are true as he verily believes.

NEWTON D. BAKER.

Sworn to before me by the said Newton D. Baker, and by him subscribed in my presence, this 23rd. day of October, A. D., 1905.

[SEAL.] JACOB M. CRAWFORD,
Notary Public.

(Endorsements:) In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division. No. 6851. The Cleveland Electric Railway Company, Complainant *vs.* The City of Cleveland and The Forest City Railway Company, Defendants. In Equity. Answer of the City of Cleveland, one of the Defendants in the above entitled cause to the Amended Bill of Complaint of The Cleveland Electric Railway Company filed against it and The Forest City Railway Company, in the Circuit Court of the United States for the Northern District of Ohio. Filed Oct 23 1905. Irvin Belford, Clerk U. S. Circuit Court, N. D. O. Newton D. Baker, Attorney for City of Cleveland.

250 *(Answer of Forest City Railway Co. to Amended Bill.)*

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division. In Equity.

No. 6851.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
v.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendants.

Answer of the Forest City Railway Company, one of the defendants in the above entitled cause, to the amended bill of complaint of the Cleveland Electric Railway Company, filed against it and the City of Cleveland in the circuit court of the United States for the northern district of Ohio.

This defendant now and at all times hereafter reserving to itself the benefit of all rights of demurrer, and of objection to the said Amended Bill for the many errors and insufficiencies therein, for answer thereto, or so much thereof as this defendant is advised it is material and necessary for it to answer, says:

I.

This defendant admits that the complainant is a corporation organized and existing under the laws of the State of Ohio, and owning and operating various lines of street railway in the City of Cleveland in the said State; also that the City of Cleveland is a municipal corporation under the laws of the State of Ohio; and that this defendant,
The Forest City Railway Company is a corporation organized
251 under the laws of the State of Ohio for the purpose of constructing, maintaining and operating lines of street railway in said City of Cleveland.

II.

This defendant admits that this is a civil action and that the amount in the controversy, exclusive of interest and costs, exceeds the sum of Five Thousand Dollars ($5000.00); but denies that this is a controversy arising under the Constitution and Laws of the United States, or that the complainant seeks relief against this defendant or the City of Cleveland by reason of an attempt on the part of the defendants, or either of them, to enforce against the complainant a law of the State of Ohio impairing any contract rights of the complainant or depriving it of any of its property without due process of law in violation of any article of the Constitution of the United States.

III.

This defendant admits that Garden street and Ohio street as referred to in the several ordinances mentioned and pleaded in the com-

plainant's bill and otherwise referred to therein were subsequently *united under one name, and designated "Central Avenue"* by which name the said former Garden street and Ohio street are now known.

IV.

This defendant admits that the complainant is a consolidated Company organized in the year 1893, and that it was formed by the consolidation of certain constituent companies, which, at the time of and prior to such consolidation, owned and operated certain street railways in the City of Cleveland, and that by the terms of such consolidation and the force and effect thereof as provided by the statute law of the State of Ohio, the complainant became and is possessed of all the rights, franchises, privileges and property
252 possessed by said constituent companies; but this defendant avers that the said consolidated Company also became and is liable and subject to all the burdens, duties, liabilities and conditions of each of said constituent companies and of the franchises granted to said constituent companies and each of them by the Council of the City of Cleveland.

This defendant also admits that the constituent companies and lines owned and operated by them which were acquired by the complainant by virtue of such consolidation are substantially as set forth in paragraph IV of its bill; but this defendant denies that each of said constituent companies was operating under grants from the City of Cleveland, no one of which expired before the first day of July, 1914.

V.

This defendant also admits that the complainant is the owner by purchase made on or about the first day of July, 1903, of all the lines of railway, rights and franchises then owned by the Cleveland City Railway Company; that the said The Cleveland City Railway Company was a consolidated company formed by the consolidation of The Woodland Avenue & West Side Street Railway Company and The Cleveland City Cable Railway Company, that at the time of such consolidation which this defendant avers was the 11th day of May, 1893, the said The Woodland Avenue & West Side Street Railroad Company was operating lines of railway described generally as The Woodland Avenue & West Side line, and that The Cleveland City Cable Railway Company was operating lines from the Public Square out Superior street to the easterly limits of the City of Cleveland, but denies that none of the grants under which the said The Clevland City Cable Railway Company was operating expired
253 before January, 1910.

This defendant denies each and every other allegation or inference of fact or law set forth in paragraph V of the complainant's amended bill.

VI.

This defendant admits that the total mileage of single track which is operated by complainant as the successor in interest of all the

various constituent companies mentioned and described in the fourth and fifth paragraphs of its bill is about two hundred and thirty-six (236) miles, and that the said mileage of lines described in the ordinance of the City of Cleveland passed on January 11, 1904, purporting to grant certain rights to this defendant and set forth in paragraph XXVIII of complainant's bill is about twelve (12) miles.

VII.

This defendant denies each and every allegation and inference of fact or law set forth in paragraph VII of the complainant's amended bill.

VIII.

This defendant admits that of the lines of street railway which the complainant now owns and is operating, the first was constructed by The East Cleveland Railway Company, a corporation incorporated some time during the year 1859 under the incorporation law then existing in the State of Ohio known as the Act of May 1, 1852, and that on the first day of November, 1859, and the 3rd day of July, 1860, and the 15th day of April, 1862, there was passed by the Council of the City of Cleveland certain ordinances or resolutions which were duly accepted by said Company granting permission for the construction, maintenance and operation of a line of railway beginning at the easterly city limits at Willson avenue; thence
254 via Euclid avenue, Case avenue, Prospect street, Erie street, Euclid avenue to and around the southerly and westerly sides of the Public Square to and in Superior street and through Superior street to Water street.

And this defendant says that at the time each of said ordinances and resolutions were passed, there was in existence and in force a general ordinance subject to which said grants of permission were made, entitled: "Ordinance prescribing the terms and conditions of street passenger railways within the City of Cleveland," duly and legally adopted on the 20th day of September, 1859, by the Council of said City and that

Section XIII thereof was as follows:

"No contract under the provisions of this ordinance shall be made for a longer period than twenty years from the date of the passage of this ordinance."

And the defendant further says that the resolution or ordinance aforesaid passed on November 1, 1859, and accepted by said Company, provided as follows:

"Whereas, The East Cleveland Railroad Company in compliance with the provisions of an Ordinance of the City of Cleveland, passed Sept. 20th, 1859, entitled 'An ordinance prescribing the terms and conditions of street passenger railways within the City of Cleveland,' has obtained the requisite consent of the property owners and holders to lay their track on Prospect Street from its intersection with Erie street to the eastern terminus of said street, and from the intersection of Euclid street and Willson avenue, southerly on said avenue to a point opposite the eastern terminus of Prospect street upon the

line indicated by said company in the published notice hereto attached; therefore,

"Resolved, that said company is hereby authorized to build and construct said road on said line subject to all the provisions and requirements of said ordinance. Provided, said railroad company shall commence said work by the first day of January, 1860, and complete the same by the first day of Jan., 1861, and this the license of said railroad company, shall continue for the full period of twenty (20) years from and after the 20th day of Sept., 1859, provided the said railroad company shall perform all and singular the conditions of the ordinance in relation to street railroads, passed Sept. 20th, 1859, together with all and singular the further and future orders of the Council in relation to said railroad, and it is expressly
255 understood that if said railroad company shall neglect or refuse to perform upon their part as above stated, that this, their license shall cease. (Adopted Nov. 1st, 1859.)

And this defendant further says that the resolution aforesaid passed July 3, 1860, provided as follows:

"Resolved, That the East Cleveland Railroad Company shall be and is hereby permitted to continue their route already granted to them, and lay down and use a street passenger railway with the necessary turnouts from said Prospect Street in said city, commencing at its intersection with Erie Street, thence on and along Erie Street to Superior Street, thence on and along Superior street to the Public Square, thence on and along the roadway around the north side of the Public Square to the center of Superior street, subject to the terms and conditions and in accordance with the ordinance prescribing the terms and conditions of street railways, passed Sept. 20th, 1859, and the amendments thereto, and in accordance with the resolution permitting said East Cleveland R. R. Co., to use and occupy streets in said city, passed Nov. 1, 1859, and with the same rights and in accordance with the resolution relative to said route passed June 5, 1860."

And this defendant further says that the resolution aforesaid passed on the 15th day of April, 1862, contained a similar provision making the same subject to the terms and conditions and in accordance with the ordinance prescribing the terms and conditions of street railways passed September 20, 1859, and was limited by the terms thereof to expire on the 20th day of September, 1879.

This defendant admits that under the several resolutions or grants as aforesaid the lines of street railway therein authorized were afterwards constructed; but this defendant denies each and every other allegation and inference of fact or law set forth in paragraph VIII of the complainant's amended bill not herein specially admitted to be true.

IX.

This defendant admits that on the 9th day of August, 1862, not the 23rd day of July, 1862, as stated in the complainant's amended bill, the Trustees of East Cleveland Township passed a reso-
256 lution, and also an ordinance granting permission to said Company to construct and operate a street railroad in Euclid

avenue easterly from the intersection of Willson avenue to Doan's Corners, now being the corner of Euclid avenue and Fairmount street, and that under said grant the line of railway therein authorized was shortly thereafter constructed and put in operation as an extension of the line previously constructed by the said Company under the authority of the ordinances and resolutions mentioned and described in paragraph VIII of the complainant's amended bill; and this defendant admits that the territory between Willson avenue and Doan's Corners was annexed to and became a part of the City of Cleveland in the year 1872.

This defendant denies each and every allegation and inference of fact or law, except as herein admitted to be true, set forth in paragraph IX of complainant's amended bill.

X.

This defendant admits that after the said The East Cleveland Railroad Company had constructed and put in operation its line of railway under the ordinances set forth in paragraphs VIII and IX, the Council of the City of Cleveland, on or about the 14th day of January, 1868, passed an ordinance granting consent and leave to the said The East Cleveland Railroad Company to construct and operate a line of street railway "from the intersection of Prospect and Brownell streets to connect with the main line of its railroad; thence along the center of said Brownell street to its intersection with
257 Garden street; thence easterly along the center of Garden street to and across Willson avenue to the eastern boundary of said City;" that said permission was given for a period of twenty years from and after the date of the passage of said ordinance expiring January 14, 1888; and that the right during said period of twenty years from the date of said ordinance was also given "to continue to use and occupy the streets, avenues and public grounds over which its main line is now constructed and operated westerly from the junction of said road with the main line to its western terminus."

This defendant denies that by said ordinance the Council of the City of Cleveland granted permission to The East Cleveland Railroad Company to construct said line of street railway as an extension of its existing tracks or lines, or any part thereof; but on the contrary, avers that the grant was made after obtaining the consent in writing of the majority of property owners and after advertising notice of application as required by statute, and to the person that would agree to carry passengers at the lowest rate of fare as an original grant for a new and separate railway route and line.

This defendant denies each and every other allegation and inference of fact or law not herein expressly admitted to be true as set forth in paragraph X of complainant's amended bill.

XI.

This defendant further admits that after the construction of the street railway on Garden street, pursuant to the ordinance described in paragraph X of the complainant's amended bill and this answer,

the Council of the Village of East Cleveland which adjoined the City of Cleveland on the East and is now a part of said City, granted permission to the said The East Cleveland Railroad Company "to con-
struct, use and operate a street railroad as a branch of its
258 railroad through and along the following streets in said Village, to-wit, beginning at the termination of its branch road at the easterly line of the City of Cleveland in Willson avenue, running thence easterly in the center of Garden street to its intersection with the center line of Baden street; thence southerly on said center line to the southerly line of Wade street," which grant was accepted by said Company and the line thereby authorized was constructed and put in operation.

And this defendant avers that the resolution and preamble of the ordinance making such grant of permission provided as follows:

"Resolved by the Village Council of the Village of East Cleveland that the right is granted and the consent of the Village of East Cleveland is hereby given to The East Cleveland Street Railroad Company to construct a street railroad in the center of Baden street commencing at the city line of the City of Cleveland on Willson avenue running easterly to the center of Baden street; thence southerly in the center of Baden street to the southerly line of Wade street with the necessary turn-outs and switches and to operate the same for a period of twenty years from its completion, said construction to be commenced and completed within a period of five years from this date."

And this defendant avers that at the time said ordinance was passed, municipal corporations of the State of Ohio had authority in granting permission to street railway companies chartered by the State of Ohio to construct, maintain and operate lines of railway to agree with said companies upon the terms and conditions upon which such grants of permission should be made; by reason whereof the period fixed for the expiration of said grant or permission in all of said ordinances and resolutions referred to in this answer are valid and binding upon the Company to whom the same was made.

And this defendant denies each and every other allegation and inference of fact or law not herein expressly admitted to be true—set forth in paragraph XI of complainant's amended bill.

259

XII.

This defendant is not advised as to the agreement or the contents thereof made between the Village of East Cleveland and The East Cleveland Railroad Company on or about August 7, 1870 described in paragraph XII of the complainant's amended bill; and, therefore, denies each and every allegation of this paragraph of said bill.

XIII.

This defendant admits that on or about March 25, 1873, the Council of the City of Cleveland passed a resolution which was duly accepted by said Company whereby permission was granted to the East Cleveland Railroad Company "to lay a double track street railroad in Ohio street from their present track in Brownell street to

Erie street, and in Erie street from Ohio street to Prospect street to connect with the main track at this point;" that as one of the conditions of said grant of permission it was provided: "that said Company shall on completion of said tracks in Erie street and Ohio street *from* take up and remove *the present* track in Brownell street to the main track in Prospect street to Ohio street, and shall put that portion of Brownell street so abandoned in as good condition as it was when first occupied by them;" and that the said East Cleveland Railroad Company, by virtue of said authority did construct a double track street railroad as therein provided as an extension of the tracks of its Garden street branch and on the completion thereof did take up and remove the existing track in Brownell street between Prospect and Ohio streets.

And this defendant avers that said resolution of March 27, 1873, also contained the following provision:

"6. All ordinance of the City now in force or that may hereafter be enacted for the government and regulation of street railroads shall apply to this grant the same as to the other portions of said East Cleveland Railroad tracks."

And that as already set forth, Section XIII of the General
260 Ordinances of the City of Cleveland passed September 20, 1859, then in force and effect relating to passenger street railways, provided that no contract under the provisions of said ordinance shall be made for a longer period than twenty years from the date of the passage of that ordinance.

This defendant denies each and every other allegation and inference of fact and law not herein expressly admitted to be true — set forth in paragraph XIII of complainant's amended bill.

XIV.

This defendant admits that on or about the 23rd day of May, 1876, an ordinance was duly passed by the Council of the City of Cleveland and accepted by The East Cleveland Railroad Company by which said Company was "authorized and empowered to extend the Garden street branch of its road to the easterly end thereof along Garden street to Baden avenue, and along Baden avenue to Quincy street and along Quincy street to New street, and along New street to Garden street, there to connect with the Garden street track and to equip and operate said extension for twenty years in connection with said branch and its main line; but with the express condition that no increase of fare shall be charged by said Company on any part of its said branch or of its main line or of said extension by reason of said extension."

This defendant denies each and every other allegation and inference of fact or law not herein expressly admitted to be true — set forth in paragraph XIV of the complainant's amended bill.

XV.

This defendant admits that on or about September 15, 1879, the Council of the City of Cleveland passed another ordinance entitled,

"An Ordinance granting a renewal of franchise to The East
261 Cleveland Railroad Company to reconstruct, maintain and operate its street railroad in and through certain streets of the City of Cleveland;" that said ordinance recited that it was passed by authority of an act of the Legislature passed June 12, 1879; that it also recited that The East Cleveland Railroad Company was operating a street railroad in and through certain streets of the City of Cleveland under and by virtue of a grant previously obtained, and had made application in writing for a renewal of such grant for a period of twenty-five years from and after the 20th day of September, 1879; and the said ordinance authorized The East Cleveland Railroad Company "to reconstruct, maintain and operate its double track street railroad with the necessary switches, turn-tables and turnouts as heretofore constructed and now maintained and operated in the City of Cleveland commencing on Superior street at the intersection of Water street; thence through Superior to and around the southwest corner of Monumental Square to Euclid avenue; thence through said Avenue to Erie street; thence through Erie street to Prospect street; thence through said Prospect street to Case avenue; thence through said *Sace* avenue to Euclid avenue; thence through and along said Euclid avenue to Willson avenue;" and that the right thereby given, it was further provided, shall "be and remain in force for the full period of twenty-five years from the 20th day of September, 1879."

This defendant denies that the Council of the City of Cleveland intended by said ordinance or that on any proper interpretation thereof that the same in legal effect granted to The East Cleveland Railroad Company the right to continue the operation of all its
lines of railroad theretofore constructed and in operation in
262 Cleveland or any part thereof other than that explicitly mentioned and described in the ordinance itself.

And this defendant further says that on the 4th day of April, 1883, Council of the City of Cleveland passed another ordinance entitled,

"An Ordinance granting to The East Cleveland Railroad Company the right to extend, lay and operate its double track in Euclid avenue from the west line of Willson avenue to the east line of Fairmount street."

That by Section 1 of said ordinance, the right was granted to said Company to extend, lay and operate its double track on Euclid Avenue from the west line of Willson avenue to the east line of Fairmount street, and upon the terms and conditions expressed in said ordinance; that among the terms and conditions expressed therein was one which provided that the right to have and operate its said railroad on said Euclid avenue between the west line of Willson avenue and the city limits, shall terminate on the 20th day of September, A. D. 1904, with the said renewal of that part of said Company's lines lying west of Willson avenue.

And this defendant avers that the ordinance herein referred to passed on September 15, 1879, and that passed on the 4th day of

April, 1883, were passed pursuant to the authority of an act of the Legislature of the State of Ohio passed June 12, 1879, which among other things provided:

"and any cities of the first and second grade of the first class may renew any such grant at its expiration upon such conditions as they may consider conducive to the public interests." (76 O. L. p. 157.)

That both of said renewal ordinances were made upon terms and conditions mutually agreed upon and considered by the Council of the City of Cleveland conducive to public interest, and were accepted by said Company. By reason whereof, this defendant avers
263 that a new contract for the entire lines of street railway covered thereby was made between the parties which supercedes the antecedent contracts and grants, and measures and determines the respective rights and interests of the parties.

And this defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true — set forth in paragraph XV of complainant's amended bill.

XVI.

This defendant further admits that on or about the 22nd day of March, 1880, another ordinance was passed by the Council of the City of Cleveland and accepted by said Company; that it authorized and empowered The East Cleveland Railroad Company "to extend the Garden street branch of its railway from the present track at the intersection of Baden avenue and Quincy street in an easterly direction on and around said Quincy street to the intersection of Lincoln avenue, and to equip and operate the said extension and its Garden street branch for a period of twenty-five years from and after the passage of this ordinance."

And this defendant avers that the territory covered by this extension lies east of the line authorized by the resolution or ordinance of the Council of East Cleveland passed on or about the 30th day of March, 1868, and set forth and referred to in paragraph XI of the complainant's amended bill and of this answer, and that the line of street railway authorized by said last mentioned resolution or ordinance of the Village of East Cleveland is included in and a part of the Garden street branch of the railway of The East Cleveland Railroad Company, the right to operate which, together with the residue of said Garden street branch, is, by the ordinance passed on the 22nd of March, 1880, renewed for a term of
264 twenty-five years, all expiring on the 22nd day of March, 1905, and that said ordinance of March 22, 1880 was passed upon a good and sufficient consideration for the surrender and release of any rights and privileges previously owned by said Company, and was made pursuant to the authority of the act of the Legislature of the State of Ohio passed on the 12th of June, 1879, already cited; and that said Railroad Company accepted said ordinance of March 22, 1880, availed itself of the benefits of the extension of tracks thereby authorized covering a distance of two or three additional miles; by reason whereof this defendant avers that the

ordinance of March 22, 1880, became and is a valid and subsisting contract between the City of Cleveland and The East Cleveland Railroad Company whereby all antecedent rights of either party were merged and extinguished, and their rights thereafter are to be measured and determined by said ordinance.

And this defendant avers that afterwards, to-wit, at the January term, 1891, of the Circuit Court of Cuyahoga County, that being the county within which the City of Cleveland is situated, a suit in *quo warranto* was instituted in the name of the State of Ohio at the relation of Hadden *v.* the said The East Cleveland Railroad Company for the purpose of ousting the said The East Cleveland Railroad Company from the exercise of its rights and franchises on the lines of streets covered by the ordinance of the 22nd of March, 1880; and it was therein adjudged and held by the Court that the passage of the ordinance of March 22, 1880 and the acceptance thereof by the said The East Cleveland Railroad Company was a surrender by said Company of all rights and franchises previously held by said Company on said streets as of said date, and the making by the City of a renewal grant as of that date for said entire line of street railway for a term of twenty-five years; wherefore, this defendant says that the question of the expiration of all grants for said
265 Garden street branch made previous to the 22nd day of March, 1880, is *res adjudicata*. (State *v.* East Cleveland Railroad Company 6 C. C. 318. Affirmed by Supreme Court, 27 W. L. B., 64.)

And this defendant denies each and every other allegation and inference of fact or law not herein expressly admitted to be true — set forth in paragraph XVI of complainant's amended bill.

XVII.

This defendant admits that on or about February 9, 1885, the City Council of the City of Cleveland passed another ordinance which was accepted by said Company entitled: "An Ordinance to permit The East Cleveland Railroad Company to extend the Garden street branch of its railway;" that it, by said ordinance, authorized and empowered The East Cleveland Railroad Company to extend "the Garden street branch of its railway from the termination of its present track at the intersection of Quincy street and Lincoln avenue in an easterly direction on and along said Quincy street to Woodland Hills avenue and equip and operate said extension as a single track railroad with all necessary switches, turn-outs and turn-tables in connection with said branch and its main line and terminating with the grant for the main line."

This defendant avers that the words "said branch" as used by the Council in the language last quoted, means the Garden street branch, and that the words "its main line" means that line of street railway owned by The East Cleveland Railroad Company which was constructed and operated under and by virtue of the ordinances and grants set forth in paragraphs VIII and IX of the complainant's amended bill, and that on the 9th day of February, 1885, when the

ordinance above quoted was passed, the termination of the
266 grant for said main line was the 20th day of September in the year 1904; at which time the rights granted by the City of Cleveland on Quincy Street east of Lincoln avenue were limited to expire.

The defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true — set forth in paragraph XVII of the complainant's amended bill.

XVIII.

This defendant admits that on or about June 17, 1887, the Council of the City of Cleveland passed another ordinance entitled: "An Ordinance to permit the East Cleveland Railroad Company to extend the Garden street branch of its railway;" that said ordinance was duly accepted by said Company; that it authorized and empowered said Company "to extend the Garden street branch of its railway from the intersection of its present track with Baden avenue upon Garden street in an easterly direction along and upon said Garden street to the easterly line of Lincoln avenue, and equip and operate said extension as a single or double track railroad * * * in connection with said branch and its main line, and terminating with the grant for the Garden street main line."

This defendant avers that the Garden street main line within the meaning of the language of the ordinance as quoted above is the Garden street branch or railway authorized by the ordinance passed July 14, 1868, as set forth in paragraph X of this answer, and as renewed and extended by the ordinance of the City of Cleveland passed on or about the 22nd day of March, 1880, set forth in paragraph XVI of this answer, and that the date fixed by the ordinance last mentioned for the termination of the grant for the Garden street main line is the 22nd day of March, 1905.

267 This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true, set forth in paragraph XVIII of the complainant's amended bill.

XIX.

This defendant admits that on or about July 13, 1888, the Council of the City of Cleveland passed an ordinance granting to The East Cleveland Railroad Company the right to change its motive power upon certain portions of its line from horse power to electric power.

This defendant avers that before said ordinance was passed, application was made to the City of Cleveland by the said The East Cleveland Railroad Company in May, 1888, in which application it is stated by said Company, "that it is willing to afford convenient and rapid transit by the electric system upon the line of its roads on Euclid avenue from Willson avenue to the city limits, and on Cedar avenue from The Cleveland & Pittsburg Railroad Company's tracks to a point about 1500 feet easterly from Fairmount street;" and permission was asked for "the right to substitute electric power upon the routes above mentioned:" that the ordinance passed in pursuance

thereof is entitled: "An Ordinance granting to The East Cleveland Railroad Company the right to construct and operate an electric street railway on Euclid and Cedar avenues;" that said ordinance recites the communication from the Street Railroad Company already set forth, and granted permission to said Company "to propel and operate the cars upon the following named streets in said City, to-wit, Euclid avenue from Willson avenue easterly to the city limits, Cedar avenue from a point near The Cleveland & Pittsburg Railroad Company's right of way in said avenue easterly to a point about 1500 feet east of Fairmount street; that the privilege
268 thereby granted of constructing the electric system and the operation of its lines, it is provided "is granted in consideration of the improved facilities hereby contemplated and the large expenditure necessary to secure the same, and shall be in force for a period of twenty-five years from and after the date of the passage of this ordinance upon its main and Cedar avenue lines; and it was further provided by Section VIII thereof that whenever the Council "shall so require, the said Company shall use the same system as herein provided on the entire length of their main and Cedar avenue lines."

This defendant further admits that said ordinance was accepted by The East Cleveland Railroad Company; that the portions of its main line and of its Cedar avenue line therein mentioned were equipped with electricity as set forth in said ordinance, and that on the 13th day of May, 1889, the Council of the City of Cleveland passed a further resolution pursuant to the authority and right reserved to it in Section VIII of said ordinance by which The East Cleveland Railroad Company was "authorized and required as soon as practicable to extend the use of such motive power over its main and Cedar avenue lines to the westerly termini thereof."

This defendant avers that in compliance with said resolution, the said The East Cleveland Railroad Company did extend the use of electricity over that part of its lines constructed and operated under and by virtue of the ordinances mentioned in paragraph VIII of the complainant's amended bill and known and designated in said ordinance passed July 13, 1888, and in said resolution adopted May 13, 1889, as its main line.

This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true, set forth
269 in paragraph XIX of the complainant's amended bill.

XX.

This defendant admits that on or about March 10, 1890, the City Council of the City of Cleveland passed another ordinance which was accepted by said Company authorizing it to substitute electrical motive power for horse power upon the Garden street branch of its railway; that said ordinance is entitled: "An Ordinance granting to The East Cleveland Railroad Company the right to substitute electric motive power for horse power upon its Garden street branch;" that said ordinance authorized said Company, "to operate its Garden street branch by electricity *i. e.*, from the intersection of Prospect and Erie

streets, along Erie street to Ohio street; along Ohio street to Brownell street; along Brownell street to Garden street; and along Garden street to Lincoln avenue; also along New street from Garden street to Quincy street and along Quincy street to Woodland Hills avenue." And the right thereby given to erect and maintain on said streets poles and wires and the necessary appliances and fixtures for the purpose of operating and to operate electric motive power, it was expressly provided by said ordinance, should only continue "during the term of its present grant for said Garden street;" which grant, the defendant avers, terminated the 22nd day of March, 1905.

This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true, set forth in Paragraph XX of complainant's amended bill.

XXI.

This defendant admits that on or about the 30th day of March, 1891, the Council of the City of Cleveland passed another ordinance which was duly accepted by said The East Cleveland Railroad
270 Company granting the right to said Company to construct and operate a second or additional track upon Central avenue (formerly known as Garden street) from the east line of Willson avenue to the right of way of The Cleveland & Pittsburg Railroad Company, and to connect said tracks so authorized with the tracks then in and upon Central avenue at Willson avenue and at The Cleveland & Pittsburg Railroad track; that said ordinance provided that it should be accepted by said Company in writing and that such acceptance should be deemed a contract on the part of the said Company with the City to perform all and singular the matters and things required to be performed in said ordinance, and that in and by said ordinance it was further provided, "the right herein granted shall be valid until the expiration of the grants for the said Company's main line."

This defendant admits that said ordinance was accepted in writing by said Company, and the track thereby authorized was constructed and built, and the distance thereby covered is two thousand four hundred feet.

This defendant avers that the proper interpretation of the words "Company's main line" as used in said ordinance is its Garden street main line to which the track thereby authorized was annexed as an extension, and that the same expires on the 22nd day of March, 1905; but this defendant avers that if the proper interpretation of the words "Company's main line" means the Euclid avenue line authorized and constructed under and by virtue of the ordinances described in paragraphs VIII and IX of complainant's amended bill, and renewed by the ordinance passed September 15, 1879, and on which said Company was authorized to substitute electricity for animal motive power by the ordinance passed July 13, 1888, and recited in paragraph XIX of the complainant's amended bill and of this answer, then this defendant avers that it was not
271 within the power of the Council in extending the track of the Garden street branch to fix a different date for the expiration

of such extension of track from that fixed in the ordinance making the original grant.

This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true, set forth in paragraph XXI of the complainant's amended bill.

XXII.

This defendant admits that on or about April 20, 1891, the Council of the City of Cleveland passed another ordinance granting to The East Cleveland Railroad Company permission to lay an additional or second track in Quincy street from New street to Woodland Hills avenue, and authorized said Company to connect said tracks with the tracks now laid upon New street.

This defendant admits that said ordinance contained a provision as follows: "The right herein granted shall be valid until the expiration of the grants for said Company's tracks on said Quincy street east of Lincoln avenue, to-wit, July 13, 1913." But this defendant avers that the grants for said Company's tracks on said Quincy street east of Lincoln avenue are contained in the ordinance passed February 9, 1885, recited in paragraph XVII of complainant's amended bill and of this answer, and by the terms of which the rights thereby granted expired either on the 22nd day of March, 1905, or on the 20th day of September, 1904, and this defendant avers that the correct date for the expiration of the grants for said Company's tracks on Quincy street east of Lincoln avenue does, in law, control the erroneous recital thereof.

This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true, set forth in paragraph XXII of the complainant's amended bill.

272

XXIII.

This defendant admits that on or about the 17th day of July, 1893, the Council of the City of Cleveland passed an ordinance granting to The Cleveland Electric Railway Company, the successor of The East Cleveland Railroad Company, permission to extend and operate its double track street railroad in Prospect street from Erie to Ontario street, and also to extend its tracks from the present tracks at the intersection of Superior and Seneca streets; thence along Seneca street to Lake street; and thence along Lake street to Ontario street; and thence along Ontario street to the center of Monumental Park connecting with the present tracks in Ontario street; and also to construct and operate the same by electricity, and that the right thereby granted on said streets shall be in force until the 13th day of July, 1913.

This defendant admits that among other conditions in said ordinance, it was provided that the Company should comply with and perform all the terms and conditions of the resolution adopted by the City Council on the 29th of May, 1893, in reference to the consolidation of the various companies forming the complainant; that it was also provided that the Council should have the right at any

time to require the Company to operate its cars over the entire length of any of the lines or extensions or said constituent companies in the same manner and between the same termini as cars were operated prior to the consolidation of said constituent companies, and that the Council might require night cars to be operated the entire length of each of the lines of the Company at least hourly each way between midnight and six o'clock A. M., and that these provisions should apply to and be a condition on each and all, the grants made by the Council to said constituent companies or either of them.

273 This defendant admits that by said ordinance the Company was required to sprinkle between the outer rails of its track including the space commonly known as the "devil strip" on all streets and street intersections wherein any tracks on any of the lines of said Company are laid in a manner satisfactory to said Director; but this defendant denies that this requirement or any of the other requirements of said ordinance pleaded in paragraph XXIII of complainant's bill and admitted in this answer were new conditions and burdens imposed by said ordinance on said complainant.

This defendant denies that any portion of the streets on which The Cleveland Electric Railway Company was authorized to extend its double street railroad had been originally constructed as a part of the Garden street railway or branch, and denies also that said ordinance was passed with special reference to the running of cars operated upon the Garden street branch or that immediately upon the completion and equipment of said tracks for operation, the Council of said city required all cars operated upon said Garden street branch to be operated upon the tracks provided for by said ordinance.

This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true, set forth in paragraph XXIII of the complainant's amended bill.

XXIV.

This defendant further admits that on February 19, 1894, the Council of the City of Cleveland passed an ordinance entitled: "An Ordinance granting permission to The Cleveland Electric Railway Company, and The Cleveland City Railway Company to extend their tracks in Willson avenue," and that said ordinance was

274 duly accepted by both of said companies; that by said ordinance, The Cleveland Electric Railway Company was granted permission to extend its double track street railroad on and along Willson avenue from its present tracks at the intersection of Scovill and Willson avenues to its present tracks at the intersection of Perkins and Willson avenues, and from its present tracks at the intersection of Hugh and Willson avenues to the northerly terminus of said Willson avenue; that permission was granted The Cleveland City Railway Company to extend its double track street railroad on and along said Willson avenue from its present tracks at the intersection of Woodland and Willson avenues to its present tracks at the intersection of Lexington and Willson avenues, and from its

present tracks at the intersection of Payne and Willson avenues to the northerly terminus of said Willson avenue; that such extensions were to be constructed, maintained and operated in connection with the existing tracks in said Willson avenue as a double track street railroad with electricity as a motive power. This defendant further admits that in and by Section V of said ordinance, it was provided that the operation of cars on said Willson avenue by The Cleveland City Railway Company and the complainant should be under the control and regulation of the Council, and that Section VI of said ordinance provides as follows: "A passenger on any car operated on any part of said Willson avenue, on the payment of one fare, either in cash or by ticket, shall be entitled without additional or extra charge, to be transferred to any other line of either of said companies intersecting or coming to said Willson avenue, including the lines on Broadway, and to have a continuous ride thereon, with the right, without additional or extra charge, to be transferred from such second line to a car on any other line
275 of the Company operating the same which crosses the Cuyahoga River, and passengers on any line of either of said companies intersecting or coming to said Willson avenue, including the lines on Broadway, shall be entitled, without additional or extra charge, to be transferred to said Willson avenue line to have a continuous ride thereon."

This defendant further admits that Section VII of said ordinance requires the paving of the tracks and the space between the tracks and one foot outside of each rail on said Willson avenue, and that the two companies were required to widen the roadway of said Willson avenue between Euclid avenue and Scovill avenue five feet on each side, and that Section X of said ordinance provided that the grant thereby made should be in force until the first day of July, 1914.

This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true, set forth in paragraph XXIV of the complainant's amended bill.

XXV.

This defendant admits that on or about June 25, 1894, the Council of the City of Cleveland passed an ordinance which was duly accepted by said Company granting to the complainant the right to extend and operate its double track street railroad in Quincy street from New street to Willson avenue, and to operate the same by electricity; that the double track street railway which, at the time of the passage of said ordinance, was being operated in Quincy street and is therein referred to, was the Garden street branch of the East Cleveland Railroad Company; and which had been constructed and operated under the various ordinances herein referred to, and that the grant thereby made, it was expressly provided, shall terminate
with the grant for said Company's present line in Quincy
276 street, the date for the expiration of which is fixed by the ordinance as set forth in paragraph XVII of this answer.

This defendant denies each and every allegation and inference of

fact or law not herein expressly admitted to be true, set forth in paragraph XXV of the complainant's amended bill.

XXVI.

This defendant admits that on the 29th day of May, 1893, the Council of the City of Cleveland passed a resolution consenting to the consolidation which had previously taken place of The East Cleveland Railroad Company, The Broadway & Newburg Street Railroad Company, The Brooklyn Street Railroad Company and the Southside Street Railroad Company, making the complainant, The Cleveland Electric Railway Company.

This defendant avers that before the passage of said ordinance, The Cleveland Electric Railway Company addressed to the said Council a communication which is in words and figures following:

"CLEVELAND, OHIO, *May* 22, 1893.

"To the Honorable City Council of the City of Cleveland:

"GENTLEMEN: The Cleveland Electric Railway Company was organized on the 25th day of March, by the consolidation of The East Cleveland Railway Company and the Broadway and Newburg Street Railway Company. Subsequently, it was further enlarged by consolidation on the 24th day of April, 1893, with it of the Brooklyn Street Railroad Company and the South Side Street Railroad Company. These two consolidations were made under advice of counsel, and believed by the officers and stockholders of the respective companies to be legal and valid in all respects. Inasmuch as some question seems to have arisen as to the intention of The Cleveland Electric Railway Company, the Company desires to state to you officially that it does not claim any rights greater than
277 the constituent companies forming the organization; that it intends to obey all ordinances to which each and all of the constituent companies were subject; that it has, since such consolidation has been effected, issued transfer checks to all persons desiring them, to enable such persons to have a continuous ride from any East Side line to any South or West Side line, and from any South or West Side line of the Company to any East Side line, for one fare, and will continue such system of transfers where it cannot better accommodate its patrons by such through lines as it may establish; that it disclaims all intention of charging more than one fare for any such continuous ride; and that its aim has been, and will be, to give its patrons vastly improved service and accommodations by reason of such consolidation.

Very respectfully,

THE CLEVELAND ELECTRIC RAILWAY COMPANY,

By HORACE E. ANDREWS, *Vice Pres.*"

This defendant avers that the resolution passed by the Council consenting to said consolidation is in words and figures following, to-wit:

"Resolved, that the Council hereby consents to the consolidation

of the East Cleveland Railroad Company, The Broadway & Newburg Street Railroad Company, the Brooklyn Street Railroad Company and the South Side Street Railroad Company under the name of the Cleveland Electric Railway Company, under the following terms and conditions:

"That only one fare shall be charged for a continuous ride on or over any line of railway formerly owned by any other of said constituent companies and any line of any other of said constituent companies within the limits of the city of Cleveland; and passengers on any of such lines paying one fare shall be entitled, without extra or additional charge, to be transferred to any other of said
278 lines and have a continuous ride thereon for said single fare. The said The Cleveland Electric Railway Company shall within ten days after the adoption of this resolution, file with the City Clerk, in writing, an acceptance of the terms and conditions herein and an agreement to perform the same; otherwise this resolution shall be null and void."

This defendant admits that after the passage of said resolution, complainant accepted the same in writing, but denies that the force and effect of such consolidation or of any of the other resolutions or ordinances pleases in said bill or of any of the laws of the State of Ohio relating thereto is to confer upon the complainant the right to operate its system of street railways as an entire system so as to prevent the expiration of the several franchises granted to the complainant or any of its constituent companies at the time fixed by the ordinances and resolutions granting the same or that the force and effect thereof or of any ordinance authorizing an extension of track to be operated in connection with an existing line has the force and effect of extending the date for the expiration of any of the franchises of any of the constituent companies to the date of the last expiring franchise of any one of the companies going to make up said consolidated company or to any other different date than that fixed in the ordinances granting the franchise.

And this defendant avers as to all of the alleged extensions of time for the expiration of said franchises whether asserted by reason of consolidations or extensions of track or the imposition of transfer privileges and other burdens that it is not competent for the City Council to extend thereby the date for the expiration of the fran-
chise or to grant an extension of track to expire at a different
279 date from that of the franchise under which the track was laid which is being extended.

And this defendant avers that afterwards, to-wit, on the 5th day of August, 1901, the Council of the City of Cleveland passed an ordinance granting to the complainant the right to extend and operate a single track street railroad from Euclid avenue along the easterly side of the Public Square to Superior street, and to connect the same with its existing tracks, which grant it was provided should expire on the 22nd day of March, 1905, unless it be sooner terminated by the City, which grant was accepted by said Company.

And the defendant further avers that afterwards, to-wit, on the 26th day of June, 1902, the Council of the City of Cleveland granted

to the complainant the right to extend its double track street railroad on Erie street from Euclid avenue to St. Clair street, and from Scovill avenue to Woodland avenue, and to connect such extension with the existing tracks of said complainant, which grant it is provided shall expire on the 22nd day of March, 1905, and which grant was accepted by said Company.

This defendant denies each and every allegation and inference of fact or law not herein expressly admitted to be true, set forth in paragraph XXVI of the complainant's amended bill.

XXVII.

This defendant admits that on or about the first day of July, 1903, the complainant acquired by purchase all of the companies forming the consolidated company known as The Cleveland City Railw Company, but it denies each and every other allegation and inference of fact or law contained in paragraph XXVII of the complainant's amended bill not herein expressly admitted to be true.

280 XXVIII.

This defendant admits that the Council of the City of Cleveland on the 11th day of January, 1904, passed an ordinance No. 44240 in the words and figures as set forth in paragraph XXVIII of complainant's amended bill; that this defendant has accepted said ordinance and that it claims that it is now the owner of and has the right beginning from the 22nd day of March, 1905, to operate and maintain upon the streets described in said ordinance which are now occupied by the complainant, a street railway, and to oust the complainant from the possession of said streets after the 22nd day of March; also that acting in pursuance of the terms of said ordinance, this defendant has made an effort to agree with the complainant as to the value of the tracks, wires, poles and other appliances in said streets to the end that this defendant may buy and pay for the same as provided for in said ordinance; also that the complainant has declined to negotiate with reference to the value of said property as therein described or to vacate the streets on or after the 22nd day of March, 1905.

This defendant admits that after the failure and refusal of said complainant to negotiate with reference to the value of said property, it made a request of the City of Cleveland which is in the language as follows:

"The undersigned respectfully asks that the City of Cleveland proceed at the earliest practicable moment to have the value of said track, poles, wires and appliances erected in the highways along the route described in said ordinance adjudicated by a court of competent jurisdiction, and also to adopt such proceedings as may be necessary to deliver possession to the undersigned of the streets and highways described in said ordinance." (Signed by The Forest City Railway Company, M. A. Fanning.)

And this defendant further avers that after the receipt of said request, the Council of the City of Cleveland adopted a resolution which is as follows:

"Resolved, that the communication of The Forest City Railway Company be referred to the City Solicitor to investigate the
281 rights and powers of the City of Cleveland in the premises and with power to institute or cause to be instituted such proceedings, if any, as he may deem advisable to have adjudicated the value of the property described in Section XIV of Ordinance 44244, and to compel The Cleveland Electric Railway Company to surrender possession after March 22, 1905, of the streets and highways included in the street railway routes described in said ordinance."

And this defendant denies each and every other allegation and inference of fact or law not herein expressly admitted to be true, set forth in paragraph XXVIII of complainant's amended bill.

XXIX.

This defendant denies that said ordinance of January 11, 1904, is void because contrary to and in violation of the Constitution of the United States in that it is a law of the State of Ohio impairing any contract obligation existing between the complainant and the City of Cleveland or that the complainant has any contract with respect to the streets covered by said ordinances which continues in force until July 1, 1914, or to any date subsequent to the 22nd day of March, 1905.

And this defendant further denies that said ordinance is void in that it is an attempt to deprive the complainant of its property or any part thereof without due process of law; and this defendant denies that said ordinance authorizes or that this defendant has or ever had any intention to take possession of all or any of the property used by the complainant in the operation of its street railway in the streets in said ordinance described, except by an agreement with and purchase from said complainant or after the right to do so and the compensation to be paid therefor had been ascertained and determined by a court of competent jurisdiction, and paid by this defendant.

This defendant denies that the passage of said ordinance of January 11, 1904, is, on the part of this defendant in furtherance of any combination or conspiracy with the municipal authori-
282 ties of the City of Cleveland or any other person or persons for the purpose of depriving the complainant of its right to operate a street railway in the streets described in said ordinance unless it will submit to an unreasonable requirement as to its rates of fare on its other lines of railway in the City of Cleveland; but this defendant avers that it applied for and obtained said ordinance in good faith and as soon as it can lawfully obtain possession of said streets expects to maintain and operate its system of street railway thereon according to the terms and conditions in said ordinance.

This defendant admits that in accordance with the provisions of said ordinance, it intends to use all lawful means to obtain possession of the rights granted to it by said ordinance and intends to maintain and operate a line of street railway upon the streets therein described; but it denies that so doing will deprive the complainant

of the benefit of any existing contract rights or of any of its property without due process of law, or that it will make it impossible for the complainant to carry out other existing contracts with the City according to the true intent and effect thereof.

This defendant also denies that before the complainant could at law contest the validity of said ordinance, a multiplicity of suits would ensue and great inconvenience, conflict and trouble would arise over complainant's refusal to recognize the validity of said ordinance, or that by reason of anything alleged in complainant's bill it is without remedy at law.

This defendant denies all of the allegations and inferences of fact or law contained in paragraph XXIX of complainant's amended bill not herein expressly admitted to be true.

283 And now having fully answered the complainant's amended bill of complaint, this defendant prays to be hence dismissed with its reasonable costs in this behalf expended.

[CORPORATE SEAL.] THE FOREST CITY RAILWAY COMPANY,
By M. A. FANNING, *Pres't.*

STATE OF OHIO, *Cuyahoga County, ss:*

M. A. Fanning being first duly sworn deposes and says that he is the President of the defendant Company, The Forest City Railway Company, and that the facts and allegations contained in the foregoing answer are true as he verily believes.

A. H. FIEBACH,
[NOTARIAL SEAL.] *Notary Public.*

GARFIELD, HOWE & WESTENHAVER,
Solicitors for Respondent.

Endorsements on Answer of The Forest City Railway Company to the Amended Bill of Complaint: No. 6851. U. S. Cir. Ct. North. Dist. of Ohio, Eastern Division. The Cleveland Electric Railway Company, Complainant, *v.* The City of Cleveland and The Forest City Railway Company, Defendants. Answer to Amended Bill. Filed Oct. 24, 1905. Irvin Belford, Clerk, U. S. Circuit Court, N. D. O. Garfield, Howe & Westenhaver, Attorneys for Forest City Ry. Co.

284 (*Replication to Answer of the City of Cleveland.*)

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

6851. In Equity.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY Defendants.

Replication.

This replicant, the Cleveland Electric Railway Company, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, the City of Cleveland, to the Amended Bill of Complaint, for replication thereunto saith that it doth and will aver, maintain and prove its said amended bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of said defendant is very uncertain, evasive, and insufficient in law to be replied unto by this replicant; without this, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true, all which matters and things this replicant is ready to aver, maintain, and prove as this Honorable Court shall direct, and humbly pray as in and by its said amended bill it hath already prayed.

SQUIRE, SANDERS & DEMPSEY,
Solicitors for Complainant.

(Endorsements:) No. 6851. The Cleveland Electric Railway Company, Plaintiff, *vs.* City of Cleveland and The Forest City Railway Co. Defendants. Replication to Answer of City of Cleveland to Amended Bill of Complaint. Filed Nov. 3, 1905. Irvin Belford, Clerk U. S. Circuit Court, N. D. O. Squire, Sanders & Dempsey, Cleveland.

285 (*Replication to Answer of the Forest City Railway Company.*)

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

No. 6851. In Equity.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendants.

Replication.

This replicant, The Cleveland Electric Railway Company, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, The Forest City Railway Company, to the amended bill of complaint for replication thereunto saith that it doth and will aver, maintain and prove its said amended bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of said defendant is very uncertain, evasive, and insufficient in law to be replied unto by this replicant; without this, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays as in and by its said amended bill it hath already prayed.

SQUIRE, SANDERS & DEMPSEY,
Solicitors for Complainant.

No. 6851. The Cleveland Electric Railway Company, Plaintiff *vs.* City of Cleveland and The Forest City Railway Co. Defendants. Replication to Answer of Forest City Railway Co. to Amended Bill of Complaint. Filed Nov. 3, 1905. Irvin Belford, Clerk U. S. Circuit Court, N. D. O. Squire, Sanders & Dempsey, Cleveland.

286 (*Letter of Counsel.*)

Garfield, Howe & Westenhaver, Attorneys and Counselors at Law, Garfield Building, Cleveland, Ohio.

DEC. 20, 1905.

Mr. Robert B. Rifenderick, # 1522 Williamson Building, Cleveland, Ohio.

DEAR SIR: I send you herewith your compilation of the ordinances, resolutions, communications, maps, etc., in the case of the

Cleveland Electric Railway Company *vs.* The City of Cleveland and The Forest City Railway Company which have been examined and compared by us and is approved. This may be considered as a sufficient assent on the part of Mr. Baker and myself to its being filed as a testimony agreed on in the case.

Yours very truly, D. C. WESTENHAVER.

(Endorsed as follows:) 6851. U. S. Circuit Court, Northern District of Ohio, Eastern Division. Letter of D. C. Westenhaver. Filed Jan. 2 1905 Irvin Belford, Clerk.

287 (*Testimony Filed by Agreement of Parties.*)

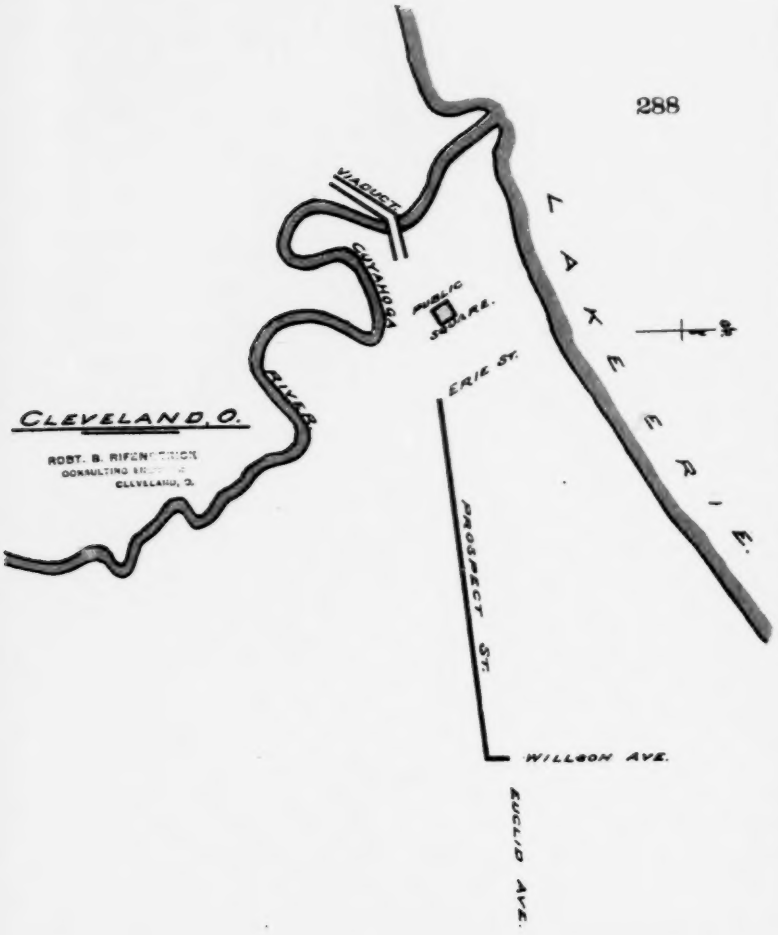
Resolution by Mr. Thayer.

Whereas, The East Cleveland Railroad Company in compliance with the provisions of an Ordinance of the City of Cleveland, passed Sept. 20th, 1859, *u*ntitled, "An ordinance prescribing the terms and conditions of street Passenger Railways within the City of Cleveland," has obtained the requisite consent of the property owners and holders to lay their track on Prospect street form its intersection with Erie street to the eastern terminus of said street, and from the intersection of Euclid street and Willson avenue, southerly on said avenue to a point opposite the eastern terminus of Prospect street upon the line indicated by said company in the published notice hereto attached; therefore,

Resolved, that said company is hereby authorized to build and construct said road on said line subject to all the provisions and requirements of said ordinance. Provided, said railroad company shall commence said work by the first day of January, 1860, and complete the same by the first day of January, 1861, and this the license of the said railroad company, shall continue for the full period of twenty (20) years from and after the 20th day of Sept., 1859, provided the said railroad company shall perform all and singular the conditions of the ordinance in relation to street railroads, passed Sept. 20th, 1859, together with all and singular the further and future orders of the Council in relation to said railroad, and it is expressly understood that if said railroad company shall neglect or refuse to perform upon their part as above stated, that this their license, shall cease.

(Adopted Nov. 1st, 1859.)

(Here follows map marked page 288.)



The Black line shows the original grant of the route of the East Cleveland Railroad Company, by a resolution of the Council dated Nov. 1, 1859.

No. 58.
C.E.Ry Co. A 288
Cleveland dat

289 *Resolution.*

By Mr. WILLARD:

Whereas, The Kinsman Street Railroad Company have signified to the Council of the City of Cleveland, their intention to release to said City the permission to them already granted, to lay a single track railroad on Erie street from its intersection with Prospect street running thence on Erie street to Superior street; thence on Superior street to the Public Square and along the roadway running around the north side of the Public Square to Superior street west of the Public Square, and

Whereas, The East Cleveland Railroad Company have given notice of an application to said Council for permission to be granted to them to lay a street passenger railway from said intersection of Prospect on said Erie street on and along said route; therefore,

Resolved, That on said release being given, and when the time requisite for said notice expires and other conditions of the Ordinance prescribing the terms and conditions of Street Passenger Railways within said City, passed September 20th, 1859, shall be complied with, permission shall be granted to said East Cleveland Railroad Company to lay a Street Passenger Railway on and along said route, and on and along said Superior street to the Atwater block on said street, under the terms and conditions of said Ordinance, it being a continuation of their said route already granted to them, and whenever the word "track" occurs in the resolution granting permission to the Kinsman Street Railroad Company to occupy streets, passed October 25th, 1859, the same be stricken out and the word "passenger" inserted in lieu thereof. Also that the following provision in said resolution, viz: "That the East Cleveland Railroad Company shall be allowed to use the track of said Kinsman Street Railroad Company from the intersection of Prospect with Erie street to the Public Square, upon reasonable terms to be prescribed by the Council unless agreed upon by the parties," be stricken out of the same.

(Unanimously adopted June 5, 1860.)

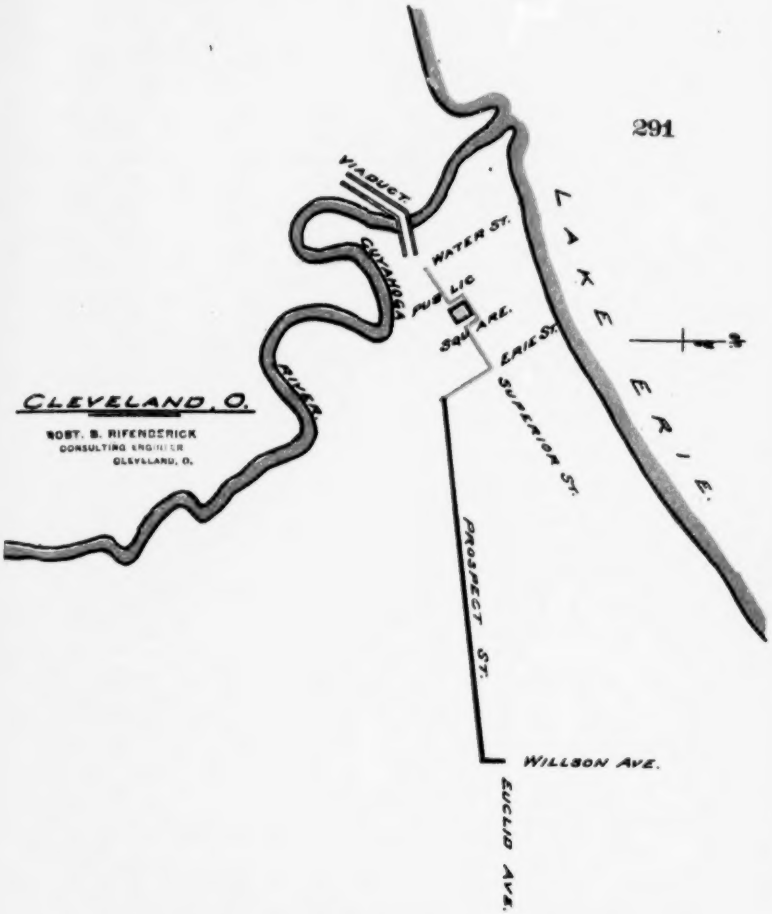
290 *Resolution.*

The Kinsman Street Railroad Company having released to the City the right granted to them in the resolution passed October 25th, 1859, to lay a single track railroad on Erie street from the intersection of Prospect street therewith, thence on Erie street to Superior street, thence on Superior street to the Public Square, thence on and along the roadway around the north side of the Public Square to Superior street west of the Public Square, and the requisite notice of publication in two daily papers having been given, and the written assent of the holders of more than two-thirds of the property fronting on said streets being produced, and the other conditions of the ordinance, prescribing the terms and conditions of street Passenger Railways within the City, passed Sept. 20th, 1859, having been complied with—therefore,

Resolved, That the East Cleveland Railroad Company shall be and is hereby permitted to continue their route already granted to them, and lay down and use a street passenger railway with the necessary turn-outs from said Prospect street in said City, commencing at its intersection with Erie street, thence on and along Erie street to Superior street, thence on and along Superior street to the Public Square, thence on and along the roadway around the north side of the Public Square to the center of Superior street,—subject to the terms and conditions, and in accordance with the ordinance prescribing the terms and conditions of street railways, passed Sept. 20th, 1859, and the amendments thereto, and in accordance with the resolution permitting said East Cleveland Railroad Company, to use and occupy streets in said city, passed Nov. 1, 1859, and with the same rights and in accordance with the resolution relative to said route passed June 5, 1860.

(Adopted July 3rd, 1860.)

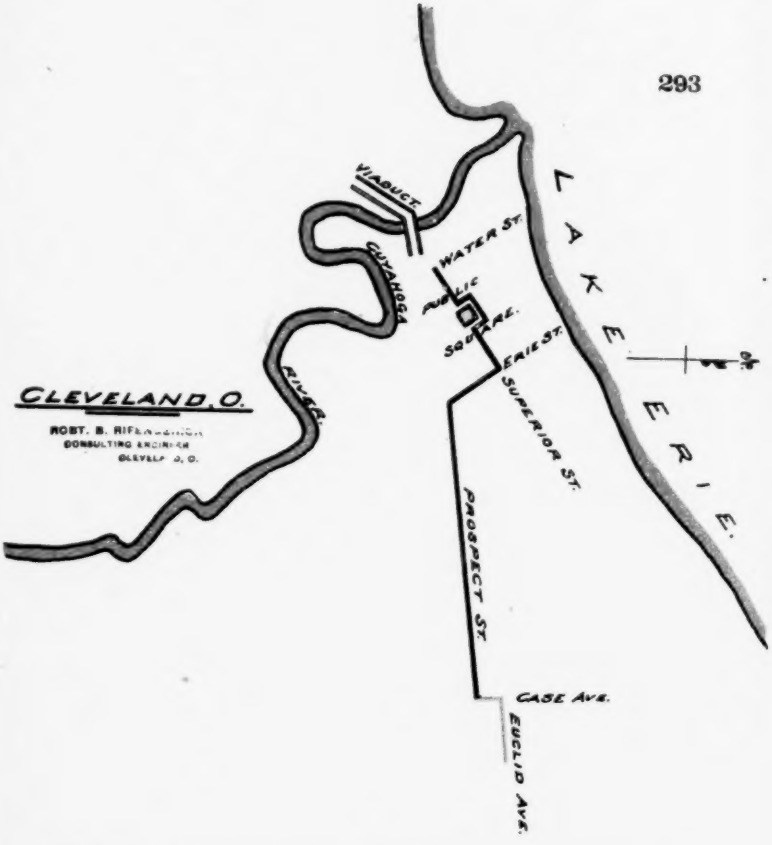
(Here follows map marked p. 291.)



The Red line shows that part of the route of the East Cleveland Railroad Company, granted by the resolution of the City Council June 5, 1860.

The Red and Black lines together show the route of the East Cleveland Railroad Company on this date of June 5, 1860.

No. 581.
C. E. Ry Co
v.
Cleveland
et al.
p. 291



The Red line shows that part of the route of the East Cleveland Railroad Company, granted by the resolution of the City Council July 31, 1860.

The Red and Black lines together show the route of the East Cleveland Railroad Company on this date of July 31, 1860.

No. 581.
C. & Ry. Co.
v.
Cleveland
et al.
p. 293

292 *Resolution.*

By Mr. STEVENS:

Whereas, The East Cleveland Railroad Company have complied with the terms and conditions of the ordinance prescribing the terms and conditions of Street Railroad Companies, passed Sept. 20th, 1859, and have presented to the City Council the written consent of the holders of two-thirds of the property fronting on the respective streets proposed to be occupied by said Company, therefore,

Resolved, That said East Cleveland Railroad Company be and is hereby permitted to lay a passenger railway with the necessary turnouts, from the intersection of Euclid street with Willson avenue, and on and along Euclid street to Case avenue, and on and along Case avenue to Prospect street, and on and along Euclid street to Hudson street, thence on and along Hudson street to its intersection with Prospect street subject to the terms and conditions of said ordinance and amendments thereto, and with the same rights and conditions contained in its permissions heretofore granted to said Company.

(Adopted July 31, 1860.)

(Here follows diagram marked page 293.)

294 *Communication.*

From H. S. Stevens, President of the East Cleveland Railroad Company.

To the Honorable the Mayor and City Council of Cleveland:

The East Cleveland Railroad Company hereby formally accept the several permissions heretofore granted to said Company to use and occupy certain streets in said city for the purpose of a Street Passenger Railway, and notify your Honorable Body that said Company have commenced the laying of said railway company's tracks on and along the streets specified, in accordance with said permissions and the Ordinance of the City Council passed September 20, 1859, and the amendments thereto authorizing the same.

H. L. STEVENS,
President, East Cleveland Railroad Co.

Received Aug. 7, 1860.

295 An ordinance to permit the East Cleveland Railroad Company to occupy the west part of Euclid street.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That the East Cleveland Railroad Company be, and are hereby authorized and empowered to lay and construct a single Passenger Railway from the intersection of Erie and Euclid streets, westerly, on and along the centre of Euclid street to the Public Square, under such conditions and restrictions as the City Council may from time to time prescribe.

Passed April 15th, 1862.

I. U. MASTERS,
Pres. of the Council.

C. E. HILL,
City Clerk.

Acceptance.

At a meeting held at the office of the East Cleveland Railroad Company, April 18, 1862, at 9 A. M.—present: Wm. Hewitt, H. S. Stevens, John Blair and A. Everett,—it was unanimously

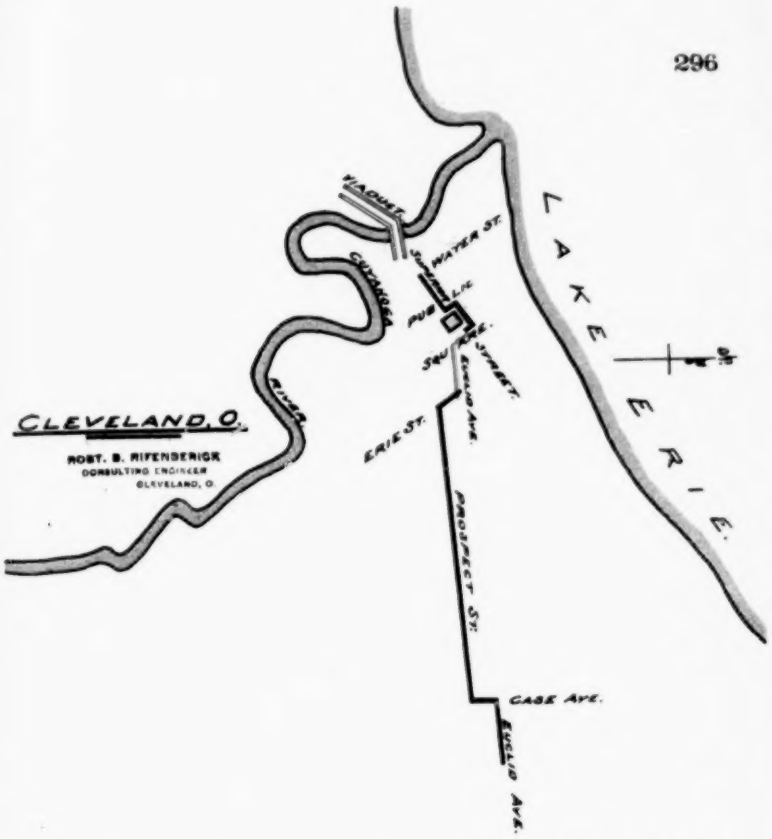
Resolved, That the East Cleveland Railroad Company accept the provisions of the Ordinance of the City Council passed Tuesday evening, Apr. 15, '62, authorizing said company to "Lay and construct a single passenger railway from the intersection of Erie and Euclid streets, westerly on and along the center of said Euclid street to the Public Square," under the conditions mentioned in said Ordinance, and that the secretary of the company be directed to furnish the City Clerk of the City of Cleveland with a copy of this acceptance with a notice that this company have commenced the construction of said railway in accordance with the provisions of said Ordinance.

Cleveland, Apr. 18, 1862.

S. G. BALDWIN,
Sec. E. C. R. R. Co.

Filed April 18, 1862.

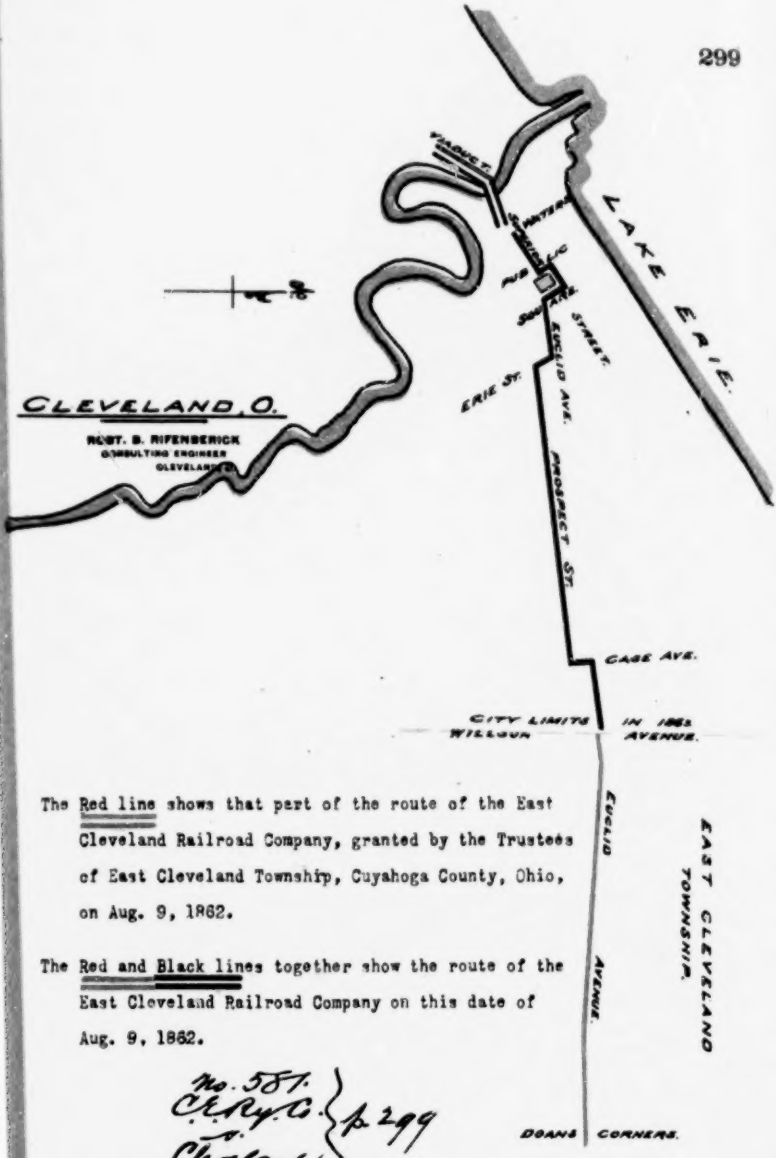
Here follows diagram marked p. 296.)



The Red line shows that part of the route of the East Cleveland Railroad Company, granted by an ordinance of the City Council passed April 15, 1862.

The Red and Black lines together show the route of the East Cleveland Railroad Company on this date of April 15, 1862.

No. 581
C. Ry. Co. } p. 296
Cleveland
etc



The Red line shows that part of the route of the East Cleveland Railroad Company, granted by the Trustees of East Cleveland Township, Cuyahoga County, Ohio, on Aug. 9, 1862.

The Red and Black lines together show the route of the East Cleveland Railroad Company on this date of Aug. 9, 1862.

No. 581.
C.R.R.C. } p 299
of
Cleveland
et al.

297

EAST CLEVELAND, OHIO, *April* 11, 1862.

To the Trustees of East Cleveland Township.

GENTLEMEN: The undersigned, on behalf of the East Cleveland Railroad Company, respectfully petition your honorable body for permission to construct and operate a railway on and along the south side of the roadway, commonly called the Euclid Road, from its intersection with Willson avenue, eastwardly to the Croton or Malta House at Doanes Corners, so called, in East Cleveland Township, Cuyahoga County. Said road to be constructed after the most approved method, and as an extension of the East Cleveland (horse) Railroad already completed between said Willson avenue and foot of Superior Street, in the City of Cleveland.

Respectfully,

WILLIAM HEWITT,
Vice Prcs. E. C. R. R., for said Company.

298

EAST CLEVELAND, OHIO, *August* 9, 1862.

We, the undersigned, Trustees of the East Cleveland Township, Cuyahoga County, Ohio, hereby grant to the East Cleveland Street Railroad Company the full right and privilege to construct a single street passenger railway track from the center of Willson avenue along Euclid street, eastwardly to the Croton House at Doanes Corners in said East Cleveland. The center line of said street railroad track to be located ten (10) feet southerly from the center line of Euclid Plank Road, and the road to be constructed in a suitable manner so as not to obstruct the public convenience; and we also grant the East Cleveland Railroad Company the right to lay the necessary side tracks, or turn-outs, upon the southerly side of the main track, and also the privilege of crossing the Plank Road at or near the terminus of the road, if necessary.

I. F. BEERS,
S. COURRIER,
C. W. DELLENBAUGH,
Township Trustees.

(Here follows diagram marked p. 299.)

300 *Resolution.*

By Mr. CLARK:

Whereas, The East Cleveland Railroad Company has heretofore applied to the City Council of the City of Cleveland, for leave to construct a street railroad from the intersection of Prospect and Brownell streets to connect with the main line of its railroad, thence along the center of said Brownell street to its intersecti n with Garden street thence easterly along the center of Garden street to and across Willson avenue to the easterly boundary of said city, and

Whereas, Said Company has filed with the City Clerk the consent in writing of a majority of the property owners of the lots or parcels of land bounding or abutting on said streets, avenues, public grounds, and public highways, or parts thereof, along, by and through which said road is contemplated to be constructed, and

Whereas, Said Company has filed with this Council its bond in the penal sum of Twenty Thousand ($20,000.00) dollars with satisfactory security to construct said railroad within twelve (12) months from the date of the grant and leave given by this Council with certain kind of rail, as specified, and

Whereas, This Council is satisfied that the requisite notice for bids has been given, as contemplated by the statute in such case made, and that the bid filed in pursuance with said notice by said Company is the lowest rates of fare for carrying passengers on said road made by any other company or individual, Therefore, Resolved, That the consent of this Council is hereby obtained and leave is hereby given to the East Cleveland Street Railroad Company to enter upon and lay down a track with the necessary switches and turn-outs upon the said streets and to use and occupy said track and switches and turn-outs upon said streets and avenues as contemplated for and during the period of twenty (20) years from and after this
301 date, and also to continue to use and occupy the streets, avenues and public grounds over which its main line is now constructed and operated, westerly from the junction of said road with the main line to its westerly terminus, for the same length of time, subject, however, to the provisions of an Ordinance of this City, passed December 4th, 1866.

(Adopted Jan. 14th, 1868.)

Acceptance.

To the Honorable the City Council of the City of Cleveland:

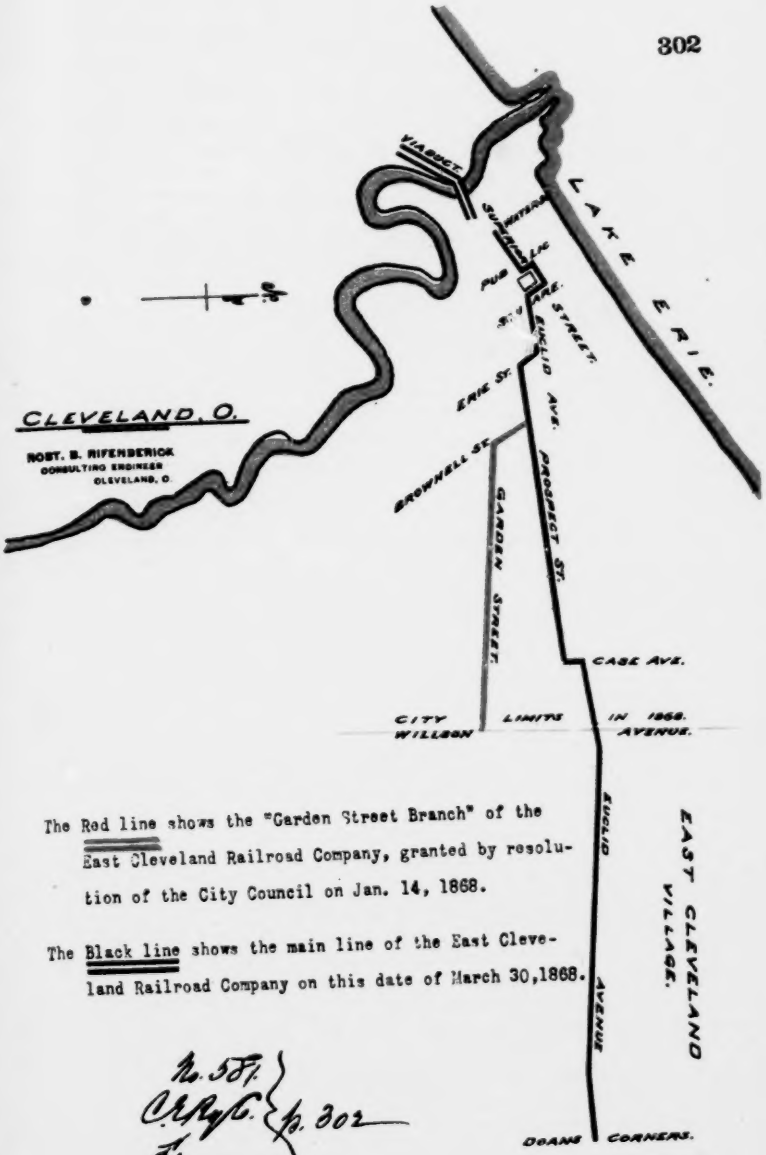
The East Cleveland Railroad Company by virtue of a resolution adopted at a special meeting of their stockholders called and held this 16th day of January, A. D. 1868, for that purpose, hereby accept the grants and permits to construct and operate a street railroad from their main track in Prospect street, through Brownell to Garden, and through Garden street to the easterly line of the City, in accordance with their petition and bid, and the ordinance and resolution of the Council hereto above attached.

Dated Cleveland, Ohio, January 16th, 1868.

5¢ Internal Revenue Stamp.

A. EVERETT,
Pres. East Cleveland St. R. R. Co.

(Here follows diagram marked page 302.)



The Red line shows the "Garden Street Branch" of the East Cleveland Railroad Company, granted by resolution of the City Council on Jan. 14, 1868.

The Black line shows the main line of the East Cleveland Railroad Company on this date of March 30, 1868.

No. 581.
C.R.Ry.C. } p. 302
Cleveland
etal.



303 To the Honorable the Mayor and Common Council of the Village of East Cleveland:

The undersigned, the East Cleveland Railroad Company, a corporation duly organized, is desirous of extending its branch railroad from its terminus at the easterly line of the City of Cleveland on Willson avenue along the center of Garden street to its intersection with the center line of Bayden street, thence southerly to the southerly line of Wade street in said Village, and said street railroad company is desirous to agree upon the manner and terms and conditions upon which the Council will permit said company to construct and operate said road, over and along said streets.

The undersigned, therefore, would respectfully ask your Honorable body to take such actions in the premises as the convenience of the public demands and the law will permit.

THE EAST CLEVELAND RAILROAD COMPANY,
By A. EVERETT, *Pres.*

304 An ordinance to authorize the East Cleveland Railroad Company to construct a branch railroad on Garden and other streets in the Village of East Cleveland was then introduced and read before the council and a motion for the suspension of the rule requiring that before an Ordinance be passed it be read before the Council on three different days having been made and passed by the following votes, viz: Yeas 6, nays 0; and the said ordinance having been three times read before the Council and a motion that it be engrossed and a vote upon its passage taken having prevailed, said ordinance was passed by the following vote, viz: yeas 6, nays 0. The said ordinance is as follows, viz:

An Ordinance to authorize the East Cleveland Railroad Company to construct a branch railroad on Garden and other streets in the Village of East Cleveland.

Be it ordained by the Common Council of the Village of East Cleveland, That the East Cleveland Street Railroad Company may, and the consent of said Village is hereby granted to said railroad company to construct, use and operate a street railroad as a branch of its said railroad through and along the following streets in said Village, to wit: Beginning at the termination of its branch road at the easterly line of the City of Cleveland in Willson avenue running thence easterly in the center of Garden street to its intersection with the center line of Baden street; thence southerly on said center line to the southerly line of Wade street; also to construct and use in said street all necessary turn-outs or switches to a proper and convenient use of said railroad, Provided always, and the above consent and grant is made by said Council upon the conditon that said railroad company will agree to carry passengers on said railroad at rates as low or lower than any other company or individual will do the same, and provided further, that said railroad company shall not commence the construction of said railroad until the consent in writing of a majority of the owners of the lots abutting on said

street shall have been obtained and filed with said Village or
305 until the rights of lot owners are condemned by due course of law; subject, however, to any ordinance that may hereafter be passed by this Council relative to street railroads.

This ordinance shall take effect and be in force from and after its passage.

Passed March 30th, 1868.

W. S. STREATOR, *Mayor.*

R. HARLON, *Recorder.*

The following preambles and resolution was then introduced and adopted:

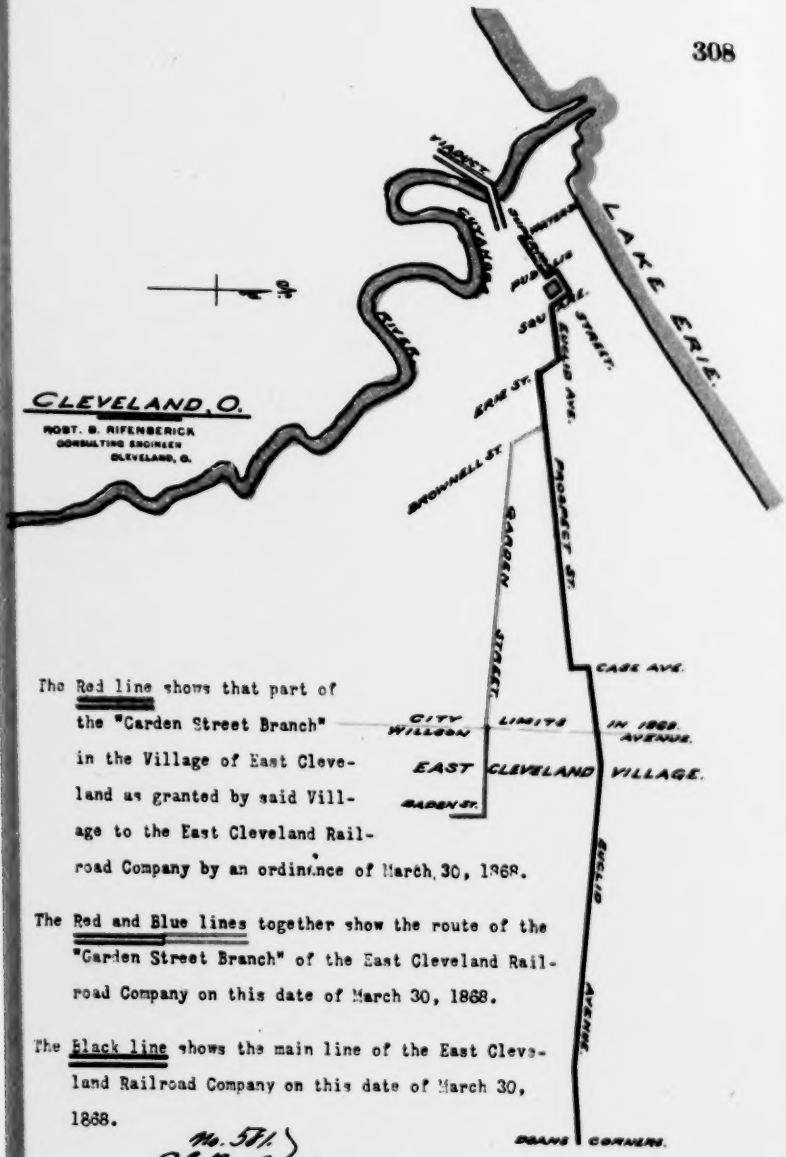
Whereas, It has been duly proved to the Council of the Village of East Cleveland, that notice for three (3) consecutive weeks has been published in the Cleveland Herald, a newspaper of general circulation in said Village, requesting bids from different corporations and individuals for carrying passengers from Willson avenue to Wade street over Garden and Baden streets, both ways, said Village proposing to give its consent to use said streets with a street railroad to such corporation or individual that would carry passengers at the lowest price, and

Whereas, The East Cleveland Street Railroad Company has offered to and has agreed to carry passengers each way on a street railroad to be constructed by said company or any intermediate distance over the same from Willson avenue to Wade street over Garden street to Baden and over Baden to Wade street for the sum of five (5¢) cents for each passenger for each way or any intermediate distance over the same, and

Whereas, Said bid being the lowest made for carrying passengers over the said road, and

Whereas, Said East Cleveland Street Railroad Company has filed with the Recorder of said Village the consent in writing of a majority of all the owners of lots of land abutting on each of said Garden street, and Baden street, Now therefore it is hereby
306 Resolved, by the Village Council of the Village of East Cleveland, that the right is granted and the consent of the Village of East Cleveland is hereby given to the East Cleveland Street Railroad Company to construct a street railroad in the center of Garden Street commencing at the City line of the City of Cleveland on Willson avenue running easterly to the center of Baden street; thence southerly in the center of Baden street to the southerly line of Wade street, with the necessary turn-outs and switches, and to operate the same for the period of twenty (20) years from its completion; said construction to be commenced and completed within a period of five (5) years from this date.

(Adopted March 30, 1868.)



The Red line shows that part of the "Carden Street Branch" in the Village of East Cleveland as granted by said Village to the East Cleveland Railroad Company by an ordinance of March 30, 1868.

The Red and Blue lines together show the route of the "Carden Street Branch" of the East Cleveland Railroad Company on this date of March 30, 1868.

The Black line shows the main line of the East Cleveland Railroad Company on this date of March 30, 1868.

No. 571.
C.E.Ry.Co.
Cleveland
Ohio
} p. 308.

307 *Acceptance.*

EAST CLEVELAND, OHIO, *July* 13, 1868.

The following document was presented by the attorney of the Railroad Company and ordered to be entered on the records of the Council:

To the Honorable the Village Council of East Cleveland:

The undersigned, The East Cleveland Railroad Company hereby accept the grant and privilege of building, constructing and operating a street railroad from Willson avenue to the southerly side of Wade street over and along Garden to Baden, and over and on Baden to Wade street, according to the terms and conditions of the ordinance of said Village.

(Signed) THE EAST CLEVELAND STREET RAILROAD COMPANY,
By THOMAS BOLTON, *Attorney.*

Received July 13th, 1868.

(Here follows diagram marked page 308.)

309 *Resolution.*

By Mr. CLARK:

That the East Cleveland and Kinsman Street Railroad Company be authorized and permitted to lay and construct a double track, as follows: viz: The East Cleveland Company, at its sole expense, a double track from the east line of the Public Square, on Euclid street, to the intersection of the center line of the south side of the Square, and the East Cleveland and Kinsman Street Railroad Companies from the last named point along the south and west side of the Public Square to the center line of Superior street, at the joint and equal expense of said companies.

Said last described double track to be jointly used and operated by the said companies for the term of twenty (20) years, but subject to the terms and conditions, as to paving and repairing, provided in an Ordinance entitled "An Ordinance to repave the street on the south and west sides of Monumental Park," passed June 25, 1855.

(Adopted July 1st, 1868.)

310 *Acceptance.*

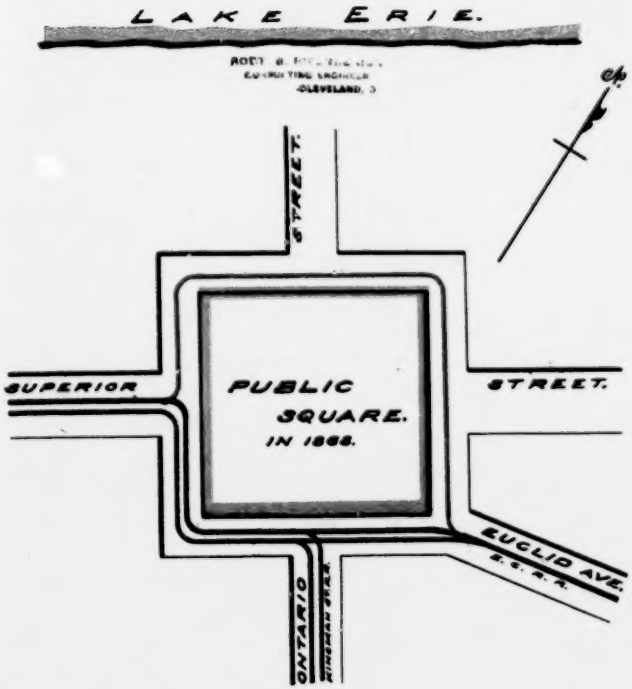
To the Honorable the City Council of the City of Cleveland:

The undersigned, The East Cleveland and Kinsman Street Railroad Companies, each for itself, and jointly, hereby accept of the conditions, terms and permits granted by your Honorable Body in Resolution passed by the Council, July 1st, 1868, granting certain rights and privileges to the East Cleveland Street Railroad Company separately, and to the East Cleveland and Kinsman Street Railroad Companies jointly, to construct, use and occupy certain double track railroads on the south and west sides of Monumental Park, mentioned in said resolution (reference hereby is made to said resolution for a more particular description).

Cleveland, Ohio, July 2nd, 1868.

A. EVERETT,
Pres. East Cleveland Street R. R. Co.
A. R. MITCHELL,
Kinsman Street Railroad Company.

(Here follows map marked page 311.)



The Black lines show the grant made to the East Cleveland Railroad Company and the Kinsman Street Railroad Company jointly, for double tracks around the south and west roadways of the Public Square, by the resolution of July 1, 1868.

The Red line shows the route of the East Cleveland Railroad Company around the north side of the Public Square at the time of the adoption of the above.

No. 581.
C.R.Ry.Co.
vs.
Cleveland
et al.
} p. 311.



312 An ordinance authorizing the Mayor of the Incorporated Village of East Cleveland to enter into a specific agreement, on behalf of said Village, with the East Cleveland Railroad Company in regard to the occupancy by said Company of Euclid Avenue.

Be it ordained by the Village Council of the Incorporated Village of East Cleveland, a majority of the owners of property abutting on Euclid Avenue between Willson avenue and Newburgh street consenting that the mayor of said Village be, and he is hereby authorized for and on behalf of said Village, to enter into the following agreement with the East Cleveland Railroad Company, its President being legally authorized by said Company to enter into the agreement on behalf of said Company.

Memorandum of an agreement entered into by and between J. E. Hurlbut, Mayor of the Village of East Cleveland, for and on behalf of said Village, and A. Everett, President of the East Cleveland Railroad Company, for and on behalf of said Company.

Witnesseth, In consideration of the several things to be done by the Village of East Cleveland and the East Cleveland Railroad Company herinafter stipulated, it is hereby mutually agreed

That said Company shall have the right, and the same is hereby conferred, as far as said Village has the power to grant it to remove its track from the southerly side of Euclid avenue in said Village and place the same in the center of said Avenue, so that the center line of said track shall coincide as nearly as possible with the center line of said Avenue; also the right to construct in said Avenue all necessary turn-outs or switches, the same, however, to be like the one now used by said Company on its road in the City of Cleveland nearest Sterling avenue; also the right to use said track and switches when so removed and constructed for the purpose of operating a street railroad, and the aforesaid rights and privileges shall be enjoyed by said Company during its corporate existence, and
313 during any period for which the same may be renewed. It is also *further agreed* that said Village will do all the necessary grading on said avenue at its own expense and will pave the same outside of and between said rails, and the said Company agrees to remove its said track and relocate the same as aforesaid and to use in the reconstruction thereof a flat rail of the same pattern as that now used by the Kinsman Street Railroad on Woodland avenue in the City of Cleveland, and also to keep the space between its rails after being in the first instance paved by said Village, as above specified, in a proper state of repairs. Yeas 6, nays 0.

On motion to suspend the rules: Yeas 6, nays 0. On motion ordinance passed to 2nd reading: Yeas 6, nays 0. On the motion for final passage: Yeas 6, nays 0.

Passed Aug. 2nd. 1870.

JOHN E. HURLBUT, *Mayor.*

D. P. STEBBINS, *Clerk.*

314 *Memorandum of an Agreement*

made this 26th day of August, 1870, by and between the Village of East Cleveland, Cuyahoga County, Ohio, duly incorporated as such under the laws of said State, and the East Cleveland Railroad Company, a corporation legally organized under the statutes of Ohio, entitled "An Act to provide for the creation and regulation of incorporated companies in the State of Ohio," passed May 1st, 1852, "and the Acts amendatory thereto," and having constructed its track and operated the same for several years within the Township of East Cleveland prior to the incorporation of said Village and also within the present corporate limits of the same, viz: from Willson avenue to Newburg street by and with the consent of the proper officers of said Township and of Cuyahoga County and of the authorities of said Village and of the owners of the lots abutting on Euclid street between said terminal of said road, the same having been constructed and operated upon the southerly side of the carriage way of said Euclid street, and being an extension or branch of its main road located in the City of Cleveland and having collected five (5) cents for each and every passenger on said branch or extension any distance East or West within said Township or Village between said termini, and

Whereas, Said Village proposes and is about to grade and pave or macadamize the whole of the carriage way at least forty (40) feet wide of that part of Euclid street along and on which said Railroad Company is now to lay and operate as aforesaid, and to prepare and make said grade in the center of said street in such condition that the same may be occupied by said Railroad Company, and

Whereas, The said Village has requested the said Railroad Company to remove its tracks, turnouts, switches and sidings from the place they now occupy in said street, to the center of same, and to place and lay suitable flat rails for the tracks of said Railroad in lieu of the "T" rail heretofore and now used on the said branch or extension, and to continue as heretofore to operate said Railroad with all necessary switches, sidings and turnouts now or hereafter required.

315 In *consideration* of the premises, it is mutually agreed by and between the Village of East Cleveland and the said Railroad Company, That within a reasonable time after the execution of this contract the said Village shall proceed to grade and properly prepare the center of said street for the reception of the superstructure of said railroad tracks, switches, turnouts and sidings, and shall pave or macadamize said street, at least forty (40) feet wide including said tracks and shall also pave between said tracks, switches, turnouts and sidings, under the directions and as required by said company. Said *Village further agrees* to and with said Company that it will so grade and pave the same at its own expense and without charge or expense to the Railroad Company and that neither it, nor its successors will at any time during the existence and life of said Company or in case the removal or extension of its Charter shall ever be necessary during the time for which said Company's Charter

shall be so renewed or extended, diminish or control the fare, or charge to be exacted by said Company for conveying passengers over and along said branch or extension on said street between said termini in either direction or for any distance. And said *Village further agrees* to procure and furnsh to said Company, before the reconstruction of said railroad shall begin, at least three-fourths (¾) of the owners of lots abutting on said Euclid street between the termini of said branch or extension, written consents to said Railroad Company to this agreement; the owners also stipulating therein that the written agreement heretofore made with said Company by the said lot owners of their grantors at the time said branch or extension was originally constructed, shall not be thereby impaired or diminished.

It is *further mutually agreed* by and between said parties that said Railroad Company as soon as said grade is so made and constructed as aforesaid, and as said paving or macadamizing is being constructed, shall proceed to remove its Railroad and put down suitable ties and stringers for the reception of said rails, for said road,
316 turn-outs, switches, and sidings, and shall place thereon a suitable flat rail like the rails on Woodland avenue in the City of Cleveland and on Garden street in said City whereon to operate said road in the center of said street. And said Railroad Company *further agrees* that after the space between the said rails has been so paved as aforesaid, to keep the same in repair at its own expense during the continuance of its Charter and existence and during also the time that said Charter may be so extended or renewed as above stated, but at no time to be charged or compelled to pay for the repairing or keeping in repair any portion of said carriage way outside the rails of said tracks, switches, or turnouts, and at no time to be subjected by said Village or its successors, to any other charge or expense.

It is *further mutually agreed* by and between said parties that this instrument shall not be construed or held a surrender or relinquishment by said Railroad Company of any of the rights for franchises held or enjoyed by it prior to the making of this agreement.

This Agreement only to be binding on the parties when it shall have been duly approved and adopted by the Council of said Village and by the said Company and duly signed and sealed by the respective parties hereto.

Witness the hand of the Mayor of said Village and the seal of said Corporation and also the hand of the President of said Company and the seal of the same.

A. EVERETT, [SEAL.]
President, East Cleveland R. R.
JOHN E. HURLBERT, [SEAL.]
Mayor, East Cleveland Village.

Made August 26th, 1870.

317

Euclid Avenue

From Fairmount Street to Rosedale Street.

An ordinance granting permission to certain individuals to construct and operate a street railroad on Euclid Avenue easterly from Fairmount street.

SECTION 1. Be it ordained by the Council of the Incorporated Village of East Cleveland, That permission be and is hereby granted to A. Everett, Charles Wasson and William Collins, and their assigns, to construct and operate a street railroad on Euclid avenue in said Village, from the easterly terminus of the railroad track of the East Cleveland Street Railroad Company at Fairmount street, to the easterly line of said Village.

SECTION 2. That said railroad track shall be laid along the center line of said Euclid Avenue.

SECTION 3. That said railroad track shall be constructed on such grade as may be directed by the Board of Improvements of said Village, and shall be laid with iron rail of the same width as now used by the said East Cleveland Street Railroad Company, and the tracks shall be of the same width as the tracks of the said East Cleveland Railway Company.

SECTION 4. The said Grantees or their assigns, in constructing said railroad, shall place outside of said track and adjacent thereto, such matter as the Board of Improvements may direct to enable vehicles to pass from the wagon roadway on to said tracks without injuring said roadway.

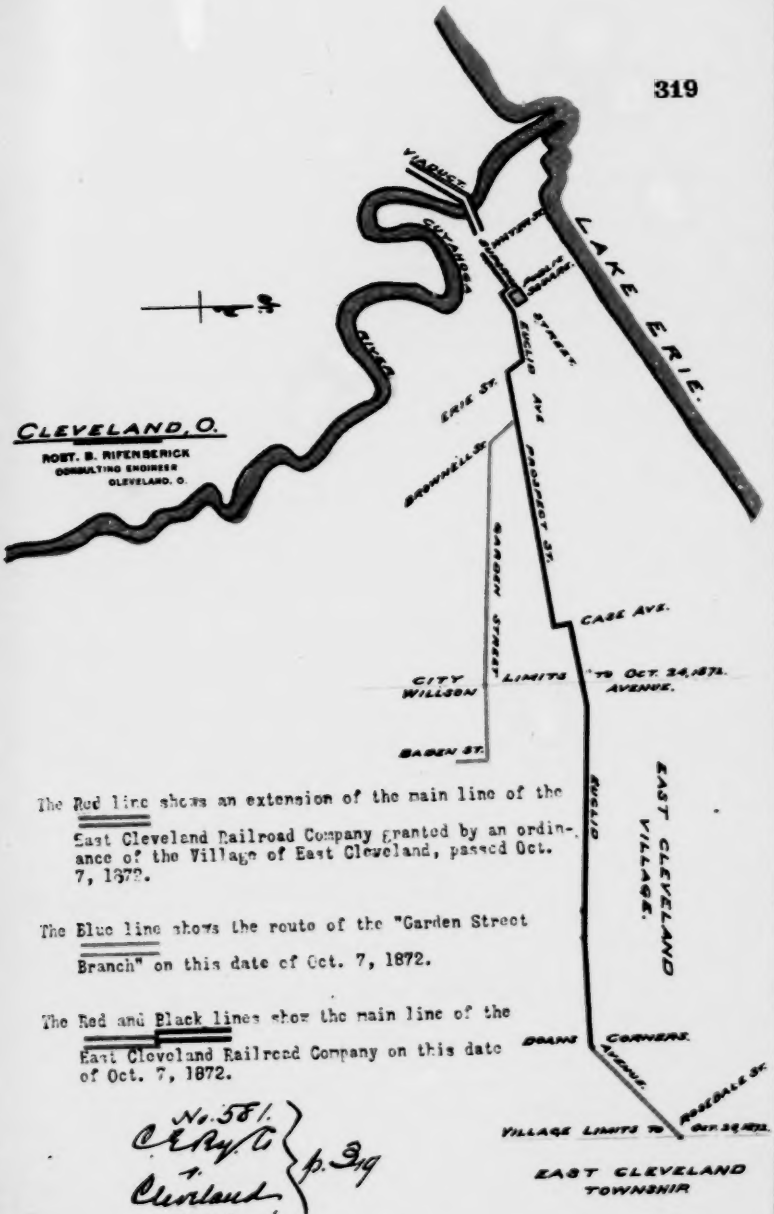
SECTION 5. That said grantees or their assigns construct said railroad and equip and put the same in active operation by the — day of — 1873, or on failure so to do this grant shall become null and void at the option of this Council.

SECTION 6. If said Grantees or their assigns shall at any time for the space of three (3) months fail to reasonably operate said railroad for the accommodation of the public, this grant shall become null and void at the option of this Council.

SECTION 7. That said railroad, for which the grant herein is made, shall be subject to any ordinances, rules, or regulations, which may hereafter be passed, or made by this Council, for the govern-
318 ment of street railroads, or prescribing how they shall be kept, repaired and operated, and subject also to the condition that the owners of property, and the residents on said avenue, between said points, shall be charged but one fare of five cents (5¢) to and from Willson avenue. Yeas 5, nays 0; on motion to suspend the rules, yeas, 5, nays 0; second reading, yeas 5, nays 0; Final Passage, yeas 5, nays 0.

Passed October 7th, 1872.

(Here follows map marked page 319.)

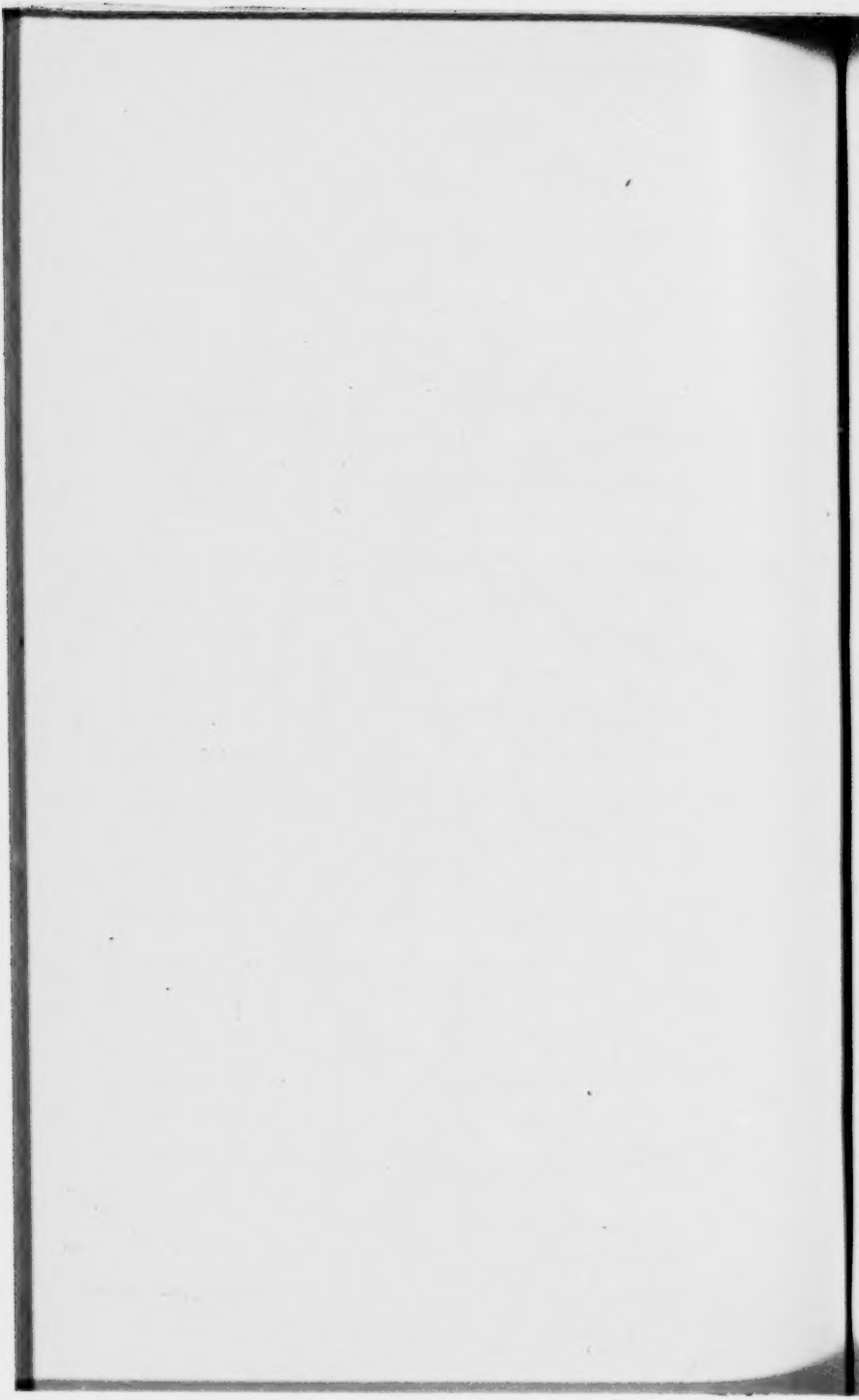


The Red line shows an extension of the main line of the East Cleveland Railroad Company granted by an ordinance of the Village of East Cleveland, passed Oct. 7, 1872.

The Blue line shows the route of the "Garden Street Branch" on this date of Oct. 7, 1872.

The Red and Black lines show the main line of the East Cleveland Railroad Company on this date of Oct. 7, 1872.

No. 58.
C. Ry. C.
v.
Cleveland
et al.
p. 319



320 *Resolution.*

By Mr. MERCHANT:

Whereas, It appears by the report of the Board of Improvements to this Council this evening, that the owners of a majority of the property, both with reference to value and frontage, on Prospect street between Erie street and Case avenue, on Case avenue and Prospect street and Euclid avenue, and on Euclid avenue between Case and Willson avenues, have given their consent to the East Cleveland Street Railroad Company to lay down a second or a double track in said portions of said streets, therefore,

Resolved, That permission be, and is hereby granted to the said East Cleveland Railroad Company to lay down a double track in Prospect street between Erie street and Case avenue, in Case avenue, between Prospect street and Euclid avenue, and in Euclid avenue between Case and Willson avenues, and upon the following conditions:

Said company shall first put the pavement between the rails of the present single track in as good condition as the pavement in other portions of the street, and shall also put and keep in good condition the pavement between the rails of said double tracks when laid, and to the satisfaction of the Board of Improvements.

2nd. Said company shall lay down for both said tracks the broad rail known as the "five inch tramrail," and do the work under the direction of the City Civil Engineer.

3rd. Said company shall pay for paving between and under the rails of their said track, and shall keep the same and one foot of pavement outside the rails of said track in good repair and to the approval of the Board of Improvements.

321 4th. The space between said double tracks shall not exceed four feet, except in that portion of Prospect street between Sterling and Case avenues the space may be four feet and six inches until said portion of said street is paved, when it shall be made not to exceed four feet.

5th. Said company shall use no salt upon their tracks for the removal of snow from the rails, and all snow thrown from the tracks shall be distributed uniformly over the entire street.

And in the operation of said road said company shall conform with all the laws of the State and the ordinances and resolutions of the City Council.

(Adopted under a suspension of the rules Feb. 25th, 1873.)

Acceptance.

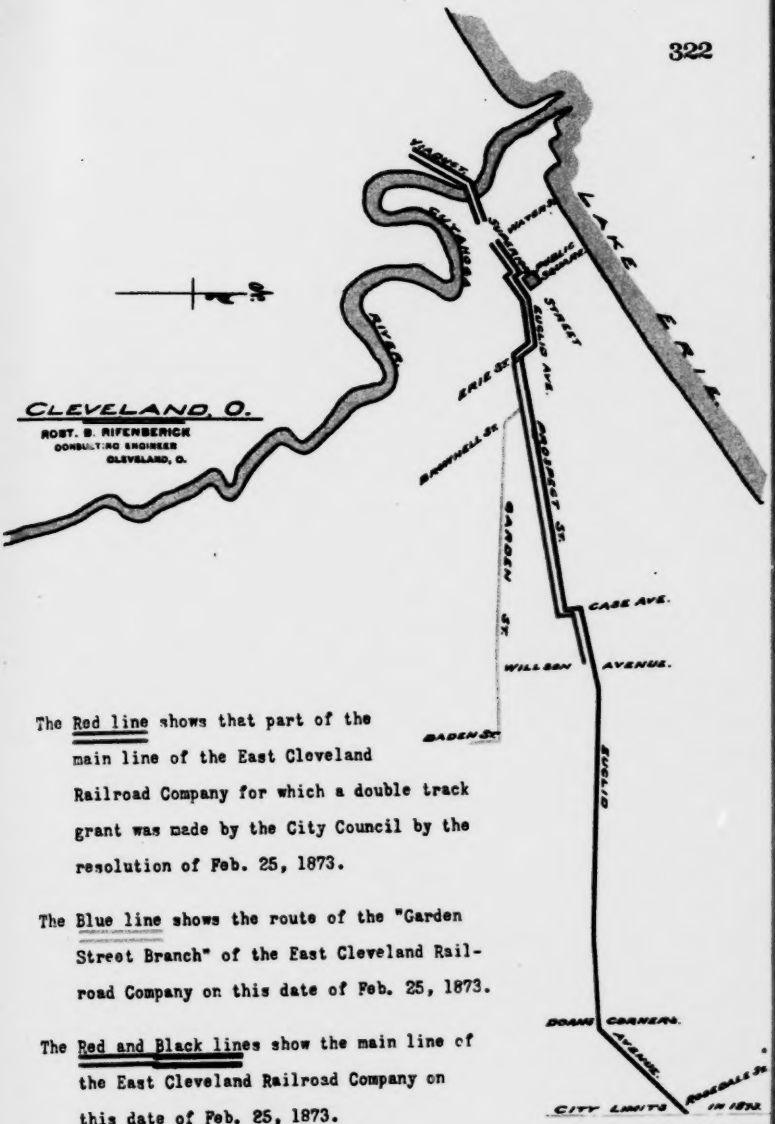
To the Honorable the Council of the City of Cleveland:

At a meeting of the Stockholders of the East Cleveland Railroad Company, held Saturday, March 1st, 1873, the following resolution was adopted:

Resolved, That this Company accept the terms of the Preamble and Resolution of the Council of the City of Cleveland, relating to a second double track on a part of this Company's road, passed February 25th, 1873, and that the President furnish the City Council a copy of this acceptance.

A. EVERETT,
President East Cleveland R. R. Co.

(Here follows map marked page 322.)

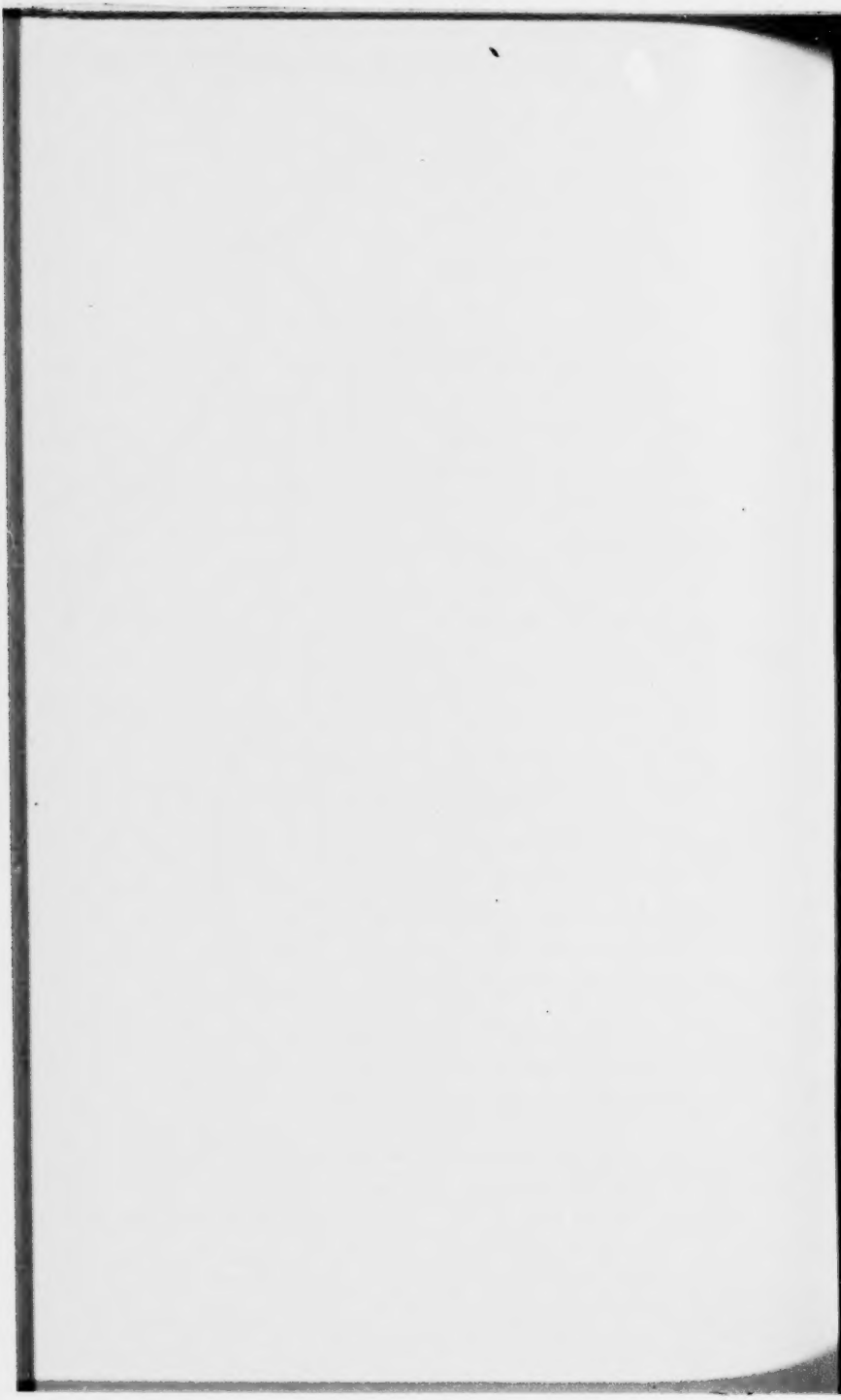


The Red line shows that part of the main line of the East Cleveland Railroad Company for which a double track grant was made by the City Council by the resolution of Feb. 25, 1873.

The Blue line shows the route of the "Garden Street Branch" of the East Cleveland Railroad Company on this date of Feb. 25, 1873.

The Red and Black lines show the main line of the East Cleveland Railroad Company on this date of Feb. 25, 1873.

No. 584 C. Rep. } p. 322
Cleveland



323 *Resolution.*

By Mr. MERCHANT:

Whereas, The East Cleveland Railroad Company desire and propose to connect their Garden street branch with the main line of their road at the intersection of Erie and Prospect streets, by laying double tracks from this point through Erie street to Ohio street, and through Ohio street to Garden street and to remove their track from Brownell street, between Ohio street and Prospect street; and

Whereas, It appears by the report of the Board of Improvements to the City Council this evening, said railroad company have obtained the consent of the owners of a majority of the property, both with respect to valuation and frontage, abutting upon Erie street between Prospect and Ohio streets, and upon Ohio street between Erie and Brownell streets, to lay their tracks through said portions of said street; therefore

Resolved, That permission be and is hereby granted to the East Cleveland Railroad Company to lay a double track street railroad in Ohio street from their present track in Brownell street to Erie street, and in Erie street, from Ohio street to Prospect street, to connect with their main track at this point, and upon the following conditions:

1st. The rail used in both said tracks shall be the five-inch tram rail.

2nd. The Railroad Company, on the completion of said tracks in Erie street between the points above specified, shall pay the owners of property abutting upon said portion of said street, one half of the original cost of so much of the paving as will be included between the rails of each of said tracks, the City Civil Engineer to furnish the Railroad Company a certified list showing the amount due each property owner.

324 3rd. The Railroad Company, in laying their tracks in Erie street shall do as little damage as possible to the paving, and shall keep in as good repair as is the balance of the pavement, the space between the rails of their tracks, and one foot outside the rails. All work shall be done under the direction and to the satisfaction of the Board of Improvements.

4th. That said Company shall, on completion of said tracks in Erie street and Ohio street, take up and remove the present track in Brownell street, from the main track in Prospect street to Ohio street, and shall put that portion of Brownell street so abandoned in as good condition as it was when first occupied by them.

5th. All ordinances of the City now in force or that may hereafter be enacted for the government and regulation of street railroads, shall apply to this grant the same as to the other portions of said East Cleveland Railroad tracks.

(Adopted under a suspension of the rules, March 25th, 1873.)

325

CITY CLERK'S OFFICE.

The following resolution was adopted by the City Council of the City of Cleveland at their meeting March 25th, 1873.

That permission be and is hereby granted to the East Cleveland Railroad Company to lay a second or double track in Garden street between Brownell street and Willson avenue, in compliance with the prayer of the petition of property owners and upon condition that they use the 5-in. or tram rail upon both of said tracks and that they comply in every respect with all ordinances of the City now in force, or that may hereafter be enacted for the government and regulation of street railroads.

THEO. VOGES,
City Clerk.

Cleveland, March 25th, 1873.

326

Acceptance.

CLEVELAND, OHIO, *March* 29, 1873.

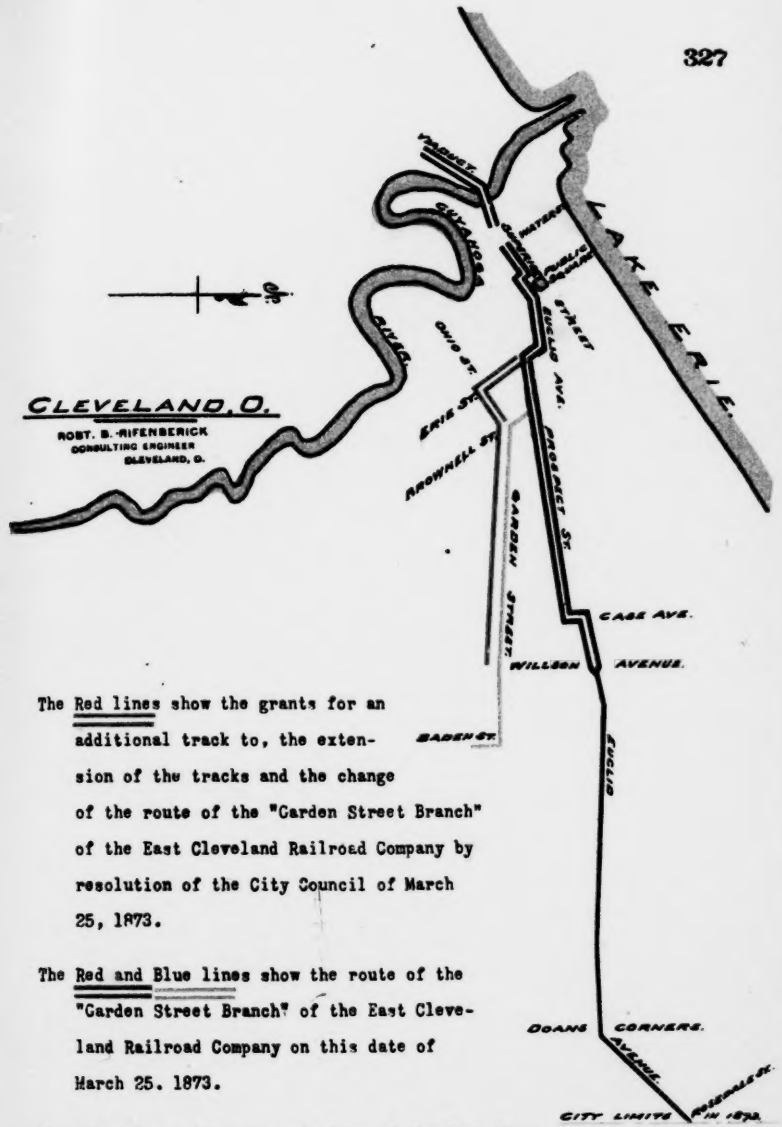
To the Honorable the City Council of Cleveland, Ohio:

At a meeting of the Directors of the East Cleveland Railroad Company held this date, the following resolution was passed:

Resolved, That this Company accept the terms of the resolutions of the Council of the City of Cleveland, adopted March 25th, 1873, relating to a double track on this Company's road in Garden street, between Brownell street and Willson avenue; also relating to a double track in Ohio street from their present track in Brownell street to Erie street, and in Erie street from Ohio street to Prospect street to connect with their main track at this point; and that the President furnish the City Council a copy of this acceptance.

A. EVERETT, *President.*

(Here follows map marked page 327.)

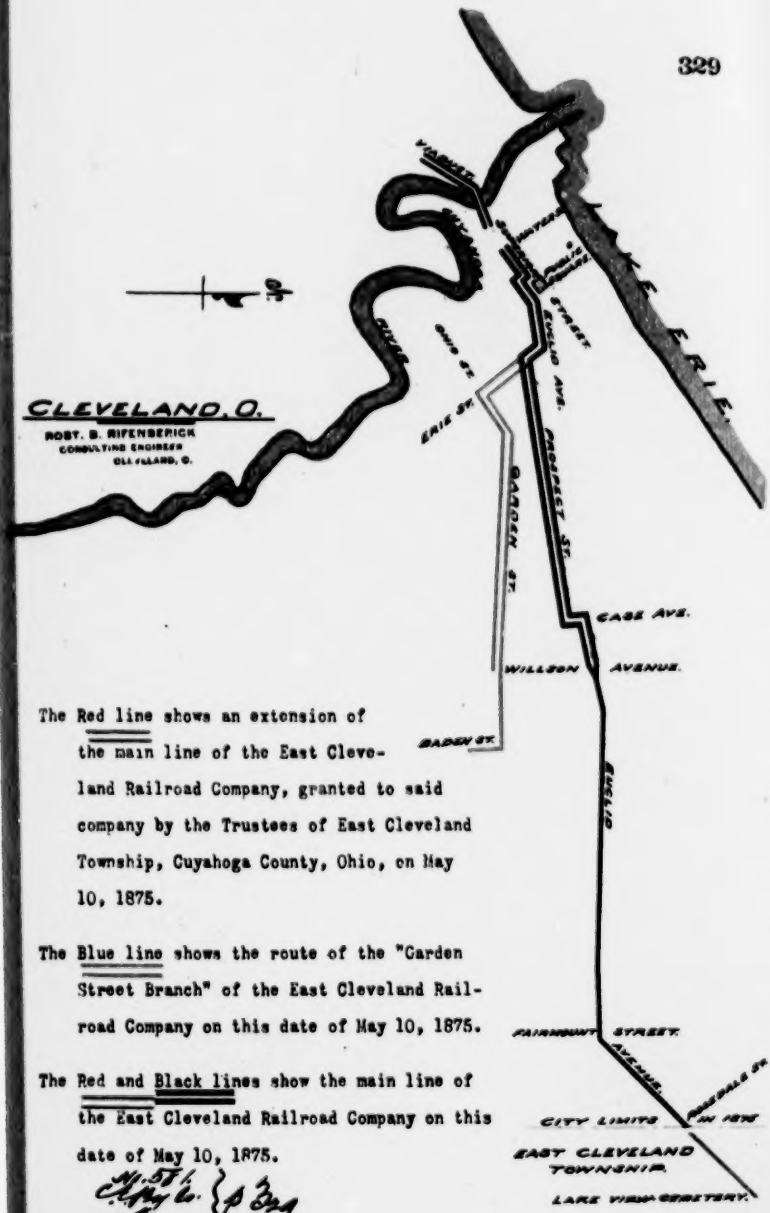


The Red lines show the grants for an additional track to, the extension of the tracks and the change of the route of the "Garden Street Branch" of the East Cleveland Railroad Company by resolution of the City Council of March 25, 1873.

The Red and Blue lines show the route of the "Garden Street Branch" of the East Cleveland Railroad Company on this date of March 25. 1873.

The Black line shows the main line of the East Cleveland Railroad Co. on this date of March 25, 1873.

No 54. City & Co. of Cleveland } p. 327



The Red line shows an extension of the main line of the East Cleveland Railroad Company, granted to said company by the Trustees of East Cleveland Township, Cuyahoga County, Ohio, on May 10, 1875.

The Blue line shows the route of the "Carden Street Branch" of the East Cleveland Railroad Company on this date of May 10, 1875.

The Red and Black lines show the main line of the East Cleveland Railroad Company on this date of May 10, 1875.

M. St. L. Ry Co. } Ass't Eng'r
Cleveland O.

328

Euclid Avenue

From Rosedale Street to Lakeview Cemetery.

To the Trustees of East Cleveland Township.

GENTLEMEN: The undersigned, on behalf of the East Cleveland Railroad Company, respectfully petition your honorable body for permission to construct and operate a street railway on and along the south side of the roadway, commonly called Euclid Road, from the corporation limits of the City of Cleveland (which said limit was formerly the easterly limits of the incorporated village of East Cleveland) to the entrance of Lake View Cemetery; said railroad to be constructed after the most approved method and as an extension of the said East Cleveland Railroad already in operation from said limits westerly into the City of Cleveland aforesaid.

Respectfully,

A. EVERETT,
Pres. E. C. R. R. Co., for said Company.

May 10th, 1875.

EAST CLEVELAND, O., *May* 10, 1875.

We, the undersigned, Trustees of East Cleveland Township, hereby grant to the East Cleveland Street Railroad Company, the full right to construct a street railway in accordance with the above petition.

L. F. BEERS,
JOSEPH ARMOR,
M. MINOR,
Township Trustees.

(Here follows map marked page 329.)

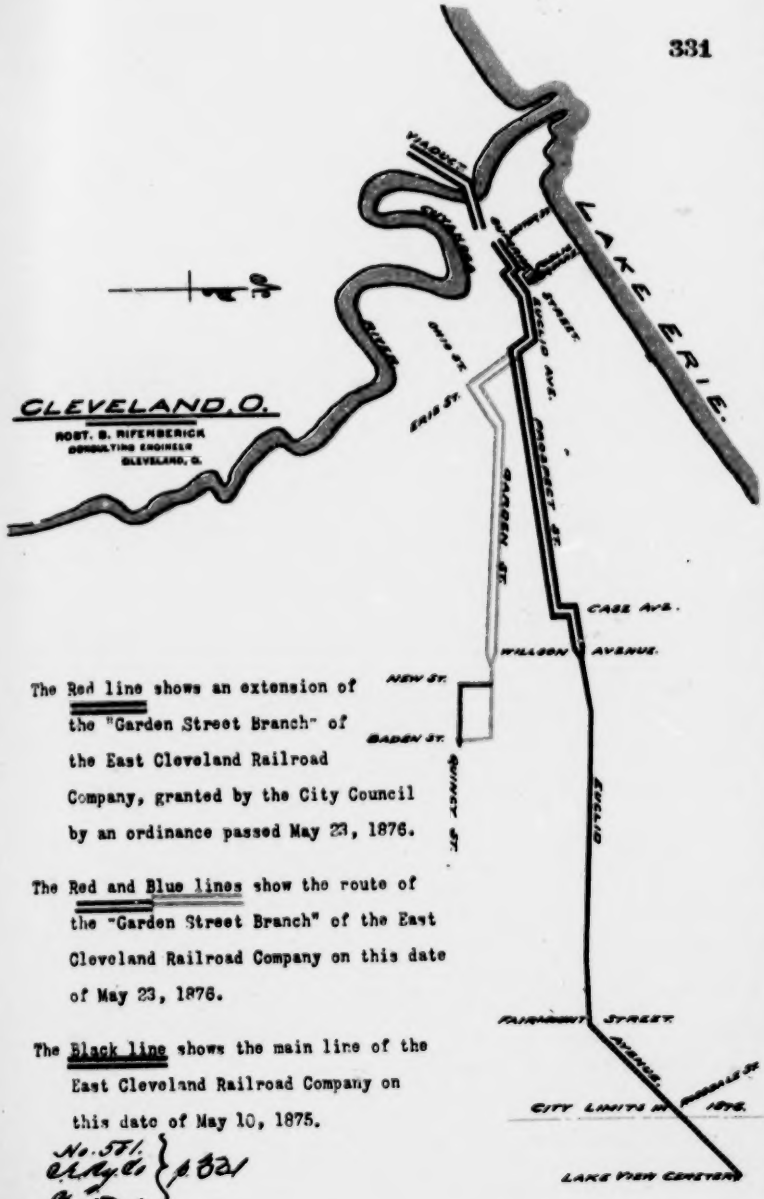
330 An ordinance to permit the East Cleveland Railroad Company to extend the Garden street branch of its road.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That the East Cleveland Railroad Company be and is hereby authorized and empowered to extend the Garden street branch of its road to the easterly end thereof, along Garden street to Baden avenue, and along Baden avenue to Quincy street, and along Quincy street to New street, and along New street to Garden street, there to connect with the Garden street track; and to equip and operate said extension for twenty years in connection with said branch and its main line; but with the express condition that no increase of fare shall be charged by said company on any part of its said branch or of its main line, or of said extension by reason of said extension. This grant is made subject to all ordinances of said City Council now in force or which may hereafter be duly passed, regulating street railroads.

SECTION 2. This ordinance shall take effect and be in force from and after the date of its passage and legal publication.

Passed May 23, 1876.

(Here follows map marked page 331.)



The Red line shows an extension of the "Garden Street Branch" of the East Cleveland Railroad Company, granted by the City Council by an ordinance passed May 23, 1876.

The Red and Blue lines show the route of the "Garden Street Branch" of the East Cleveland Railroad Company on this date of May 23, 1876.

The Black line shows the main line of the East Cleveland Railroad Company on this date of May 10, 1875.

No. 571
E.Cl.Ry.Co.
Cleveland, O.
$ 821



332 *Petition for Renewal of Franchise.*

To the Honorable the City Council:

The undersigned for an- on behalf of the East Cleveland Railroad Company, an incorporated company, hereby petition your Honorable Body for a renewal of the grant and license heretofore made and issued to said company for the use and occupancy of the several streets in and through which said company's tracks are now laid and its said road is now operated.

Your petitioners represent that said original grant was for the period of twenty (20) years, as then fixed by law, and by the provisions of a general ordinance passed September 20th, 1859.

That at the time when said road was first constructed the population on and along Prospect street was very sparse, there not being a single dwelling thereon between Case and Willson avenues, nor upon the south side of Euclid avenue between said points, and but three or four on the north side thereof, and only a few residences on its extension to East Cleveland Village.

The facilities thus early furnished by this company in the construction of the pioneer line of street railroads has resulted in populating a vast territory and greatly increasing the wealth and taxable property of the eastern part of the city.

The financial history of the road for the first eight (8) years was without encouragement, as it earned no dividend; afterwards for a few years, from five to eight per cent. was earned and divided. For the last six (6) years, probably the most favorable years known since the road was built, on account of prevailing low prices
333 of feed, and almost everything used or consumed in the operation of a street railroad, its management has succeeded in returning to its stockholders a dividend of ten (10%) per cent. on the capital invested, a percentage still too small for investments in this class of property, for while the company has been thus far so fortunate as to escape any serious calamity either to person or property yet it is liable at any moment to an accident which will sweep away its earnings for a year.

The sum total paid to stock-holders in the twenty (20) years would not average to exceed four (4%) per cent. per annum.

The company sustains in the operation of its road a large retinue of men who have families, and its annual outlay for stock and supplies is very large, all of which as well as the dividends are paid to our own citizens, and in later years it has, in pursuance of the requirements of the city, expended over $100,000.00 in paving the streets along its line.

The company has also, during its existence promptly complied with every ordinance, resolution or request of the City Council, and has discharged its every money obligation to the city, when due, and without suit, to the present time.

It has been the policy of the company to create and maintain a first class line of road such as its patrons require and such as they are entitled to have, and the managers submit that the few com-

plaints of citizens through a series of years is evidence of a fair degree of public satisfaction.

Therefore, the undersigned prays that such grant of renewal and license be made to said company for the term of twenty-five (25) years from and after the 20th day of September, 1879, as now authorized by law, subject, however, to the present ordinances of the city relating to street railroads and future legal requirements.

Respectfully, etc. A. EVERETT,

President East Cleveland R. R. Co.

Received Sept. 8th, 1879.

334 An Ordinance granting a renewal of franchise to the East Cleveland Railroad Company to construct, maintain and operate its street railroad in and through certain streets of the City of Cleveland.

Whereas, The Legislature of the State of Ohio did, on the 12th day of June, 1879, pass an act entitled "An act to amend section 4 and 5 of chapter 5 of division 8 of the act entitled an act to amend, revise and consolidate the statutes relating to municipal corporations, to be known as title 12 part 1 of the act to revise and consolidate the general statutes of Ohio," passed May 14, 1878, in which act it is recited among other provisions, relating to grants and permits for the use of streets for the purpose of constructing and operating street railroads therein, and for the renewal of grants heretofore made to individuals, companies or corporations, that the Council of "any city of the first and second grade of the first class may renew any such grant at its expiration upon such conditions as they may consider conducive to the public interest;" and

Whereas, The East Cleveland Railroad Company, a corporation existing under the laws of Ohio, and now and heretofore operating a street railroad in and through certain streets of the City of Cleveland, under and by virtue of a grant and permit previously obtained, has made application in writing for a renewal of such grant and permit to maintain and operate its said street railroad in and along the streets, as heretofore, and now located and operated for the period of twenty-five years from and after the 20th of September, 1879, therefore

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That the East Cleveland Railroad Company, its successors and assigns, be and the same are hereby authorized to reconstruct, maintain and operate its double track street railroad, with the necessary switches, turn-outs, and turn-tables as heretofore constructed and now maintained and operated in the City of Cleveland, commencing on Superior street at the intersection of Water street; thence through Superior street to and around the southwest corner of Monumental Square to Euclid avenue; thence through said avenue to Erie street; thence through said Erie street to Pros-
335 pect street; thence through said Prospect street to Case avenue; thence through said Case avenue to Euclid avenue; thence through and along said Euclid avenue to Willson avenue, subject to the following conditions and limitations, to wit:

SECTION 2. All tracks hereafter laid by the said company to be of the same guage as heretofore and now existing, and the rails of the same patterns as now laid and used on said road, with suitable gutters at all necessary points, so as to permit the free flow of water under the same and on such grades as are now or may hereafter be established by the City Council, and subject at all times to be taken up and relaid whenever deemed necessary by the Council, for the purpose of regrading said streets, constructing sewers, laying water or gas pipes therein, at the expense of the company.

SECTION 3. Whenever it shall be deemed necessary to grade, pave and improve any streets wherein said tracks are laid, the company shall be required to pave any part or all of the track between the rails with gravel, stone or other pavement as the Council may deem proper; and if said company, after reasonable notice shall fail to do such paving at the same time that any such street or streets are being so improved by said city, or at the time named in such notice, then said city may do such paving and assess the cost of such paving against said company in the same ordinance with the property owners on said street, or by a separate ordinance, and may collect the amount thereof by suit or otherwise according to law. And said company is also required to keep such pavement in constant good order; said paving and repairing to be done under the direction of and to the acceptance of the Board of Improvements.

SECTION 4. Said company is hereby required to keep clean and free from dirt so much of its roadway in said street as may be occupied by its said tracks and turn-outs and said company shall cause the dirt or street cleanings to be removed or placed in heaps
336 in such manner as not to interfere with the free use of the streets by the public; and in all cases when it becomes necessary to remove snow or ice from the said tracks, it shall be distributed evenly over the surface of the balance of the street, so as not to interfere with the free use and the occupancy of the same by the public.

SECTION 5. Said company shall place and continue on said railroad good cars with all the modern improvements for the convenience and comfort of passengers, and shall run cars thereon as the public convenience may require, under such directions as the City Council may from time to time prescribe.

SECTION 6. Said company shall not charge more than five cents fare each way for one passenger over the whole or any part herein renewed, but said company may charge a reasonable compensation for carrying packages; the Council, however reserves to itself the right to hereafter increase or diminish the rate of fare as it may deem justifiable and expedient.

SECTION 7. It is understood and agreed that the City of Cleveland shall not be held liable to said company for any damage to it arising from the breakage of any sewer or water pipe, or from any delay that may be caused by the construction of sewers, the laying of water or gas pipes, or the necessary repairing of the same, or from any delay or damage that may be caused by fire or otherwise. All rights vested in the City Council, the Trustees of Water Works, or Gas Company, in respect to the care and improvement of streets, the con-

struction of sewer, culverts or drains, and the laying of water or gas pipes therein, are in no way to be impaired or affected by the privileges hereby granted to said company, but the rights and privileges granted to said company by virtue of this ordinance, shall be subject thereto; and said company shall be liable for any loss or injury that any person may sustain by reason of any carelessness, neglect or misconduct of their agents or servants in the manage-
337 ment, construction, or use of said railroad, and the said company shall indemnify and hold the city harmless from any damage that may be claimed by property holders, or by any person or persons, on account of the laying of the track, or in the use, or by the reason thereof, or by running the cars thereon.

SECTION 8. And be it further ordained, That the following specifications are hereby required by the Council in the running of said company's cars:

1. While the cars are turning the corners from one street to another, the horses shall not be driven faster than a walk.

2. The rate of speed of all cars shall be subject to the direction of the City Council from time to time.

3. No car shall be allowed to stop on a crosswalk, nor in front of any intersecting street, except to avoid collisions or to prevent danger to persons in the street; nor shall any car be left or remain standing in any street at any time unless the same is attached to a team and waiting for passengers.

4. When the conductor of any car is required to stop at the intersection of streets, to receive or to leave passengers, the car shall be stopped so as to leave the rear platform over the crossing.

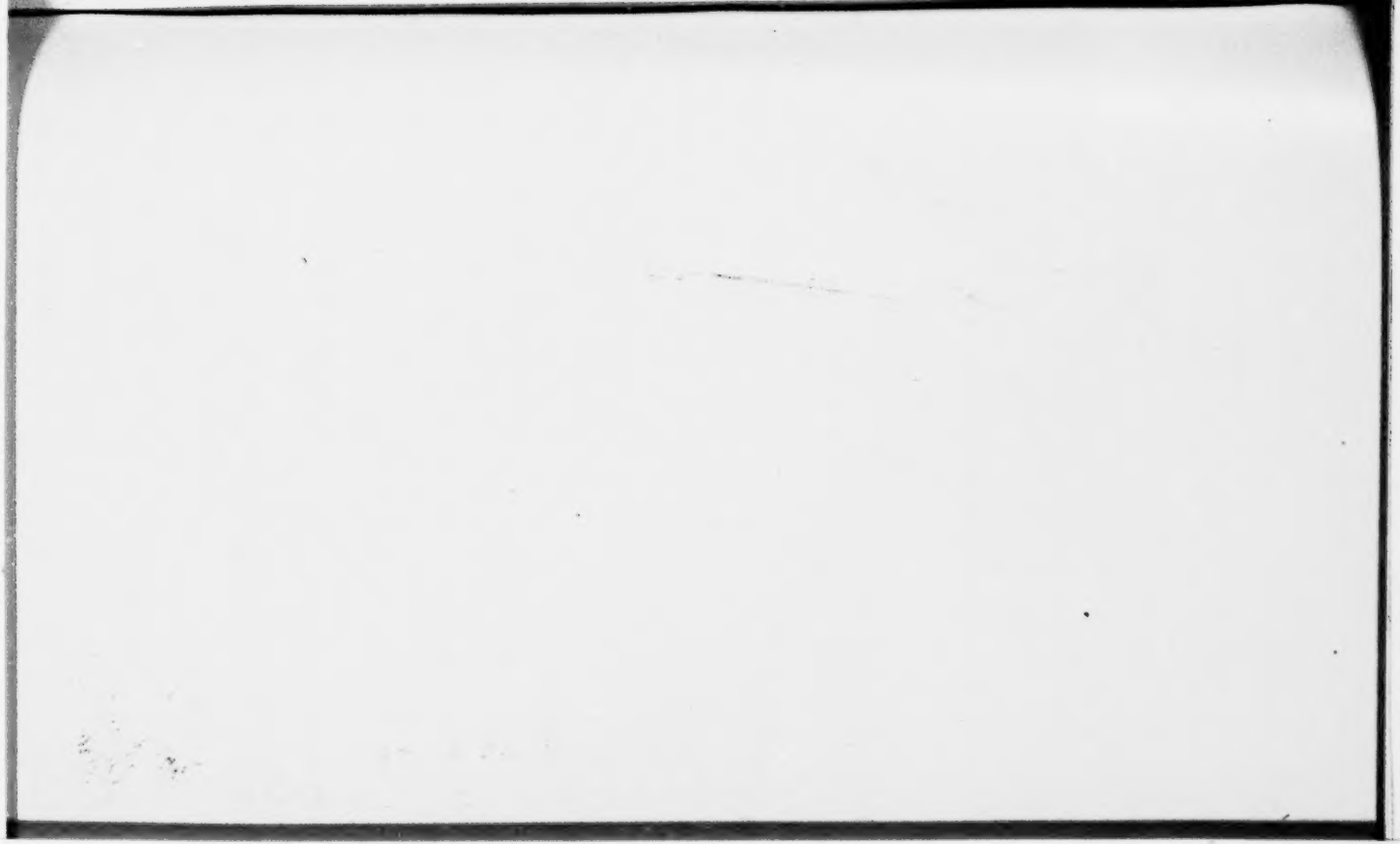
5. The conductors and drivers of each car shall keep a vigilant watch for all teams, carriages, persons on foot, and especially children, either on the track or moving toward it, and on the first appearance of danger to such team or person, or other obstruction, the car shall be stopped in the shortest time and space possible.

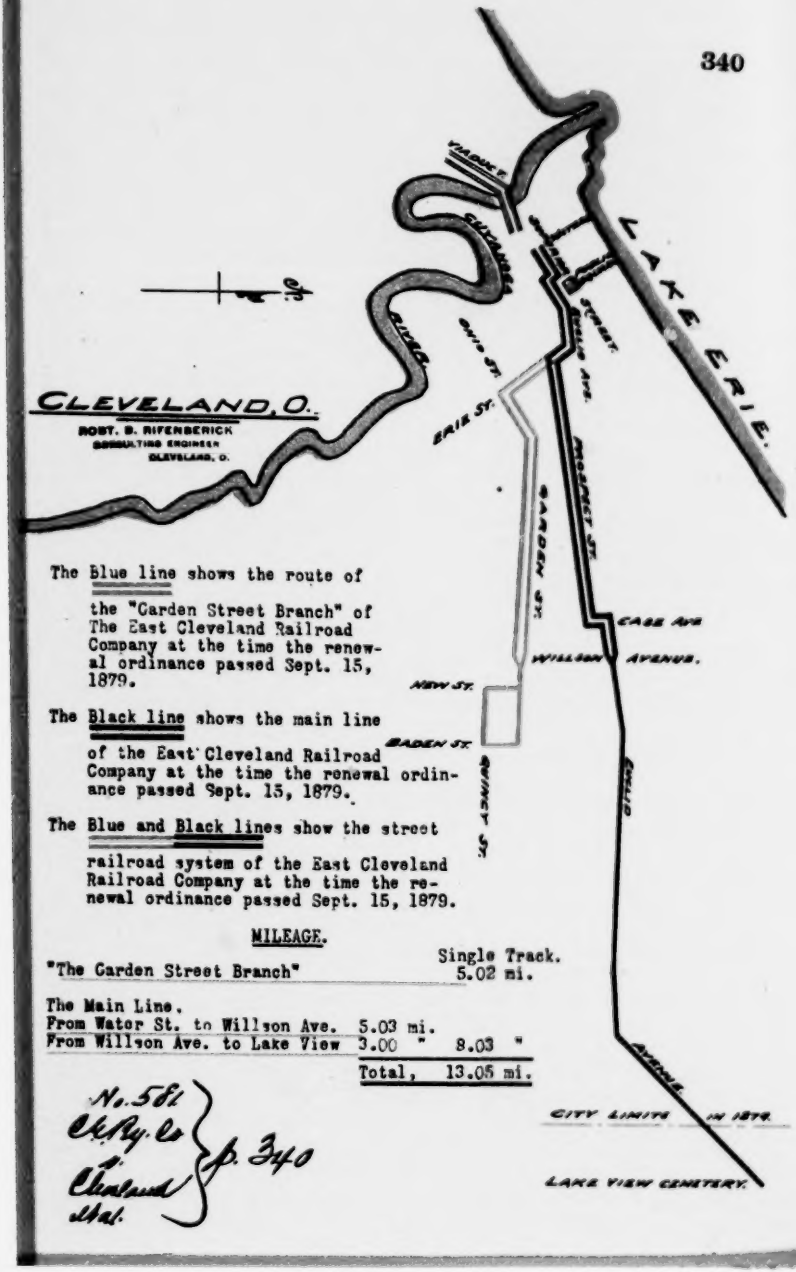
6. The conductors shall not allow ladies or children to enter or leave the cars while in motion.

7. Conductors shall announce to the passengers the names of the streets or places or wherever the cars cross in connection with any other railway track.

338 8. The cars, after sunset, shall be provided with signal lights, and each team shall at all times have a bell attached to some portion of the horses.

SECTION 9. The cars of said company shall be entitled to the track, and any vehicle upon the track of said company shall turn out when any car comes up, so as to leave the track unobstructed; and the driver of any vehicle refusing to do so when requested by the driver of any car, shall be liable to a penalty not exceeding five dollars, on conviction before the Police Court, and costs of prosecution; and all fines collected under this section shall be paid into the City Treasury, to the credit of the Street Fund; Provided, That if any person or persons shall have cause to remove any building or other large and heavy substance, they shall be allowed reasonable and sufficient time to remove, load and unload the same, without being liable to the





The Blue line shows the route of the "Garden Street Branch" of The East Cleveland Railroad Company at the time the renewal ordinance passed Sept. 15, 1879.

The Black line shows the main line of the East Cleveland Railroad Company at the time the renewal ordinance passed Sept. 15, 1879.

The Blue and Black lines show the street railroad system of the East Cleveland Railroad Company at the time the renewal ordinance passed Sept. 15, 1879.

MILEAGE.

	Single Track.
"The Garden Street Branch"	5.02 mi.

The Main Line.

From Water St. to Willson Ave.	5.03 mi.	
From Willson Ave. to Lake View	3.00 "	8.03 "
	Total,	13.05 mi.

No. 581
Cl. Ry. Co
Cleveland
Mal.
p. 340

penalty attached by this section; Provided, That such person or persons shall have first obtained the consent of the Board of City Improvements for such removal.

SECTION 10. Said company shall be required to pay to the City of Cleveland an annual license of ten dollars for each car running on this railroad.

SECTION 11. The Council hereby reserve the right to grant to any other company, corporation or individual the joint uses of the tracks of the said East Cleveland Railroad Company herein described and provided for in any and all of said streets, upon such terms and conditions as the Council shall deem just and equitable; Provided, That this reservation east of Erie street, on said road, is a reservation for, and solely for and limited to, such reasonable use of said company's tracks as may be necessary for the use of cross town lines—not parallel lines—which may hereafter be constructed, and not for the purpose of reser ing the joint use of said tracks with other lines of road which may desire to run thereon.

SECTION 12. The authority and privileges in this ordinance
339 named and provided for are to be *an* remain in force for the full period of twenty-five years from the 20th day of September, 1879; the said company, its successors and assigns, performing the several conditions of this ordinance required.

SECTION 13. That in case of failure, by neglect or otherwise, on the part of the said East Cleveland Railroad Company, its successors or assigns, to perform all and singular the general ordinance and the future ordinances of the City in relation to said road, the privileges hereby granted and renewed shall become void and of no effect, and shall cease upon the adoption of a resolution of Council to that effect.

SECTION 14. The franchise herein mentioned is granted on the condition that the Council shall have the same power to regulate the fares to be charged on the road operated by said East Cleveland Railroad Company east of Willson avenue, and to regulate the operation of said last named portion of said road that is herein provided for as the portion west of Willson avenue, leaving the contract made between said company and the village of East Cleveland unaffected in all other respects.

Passed September 15, 1879.

(Here follows map marked page 340.)

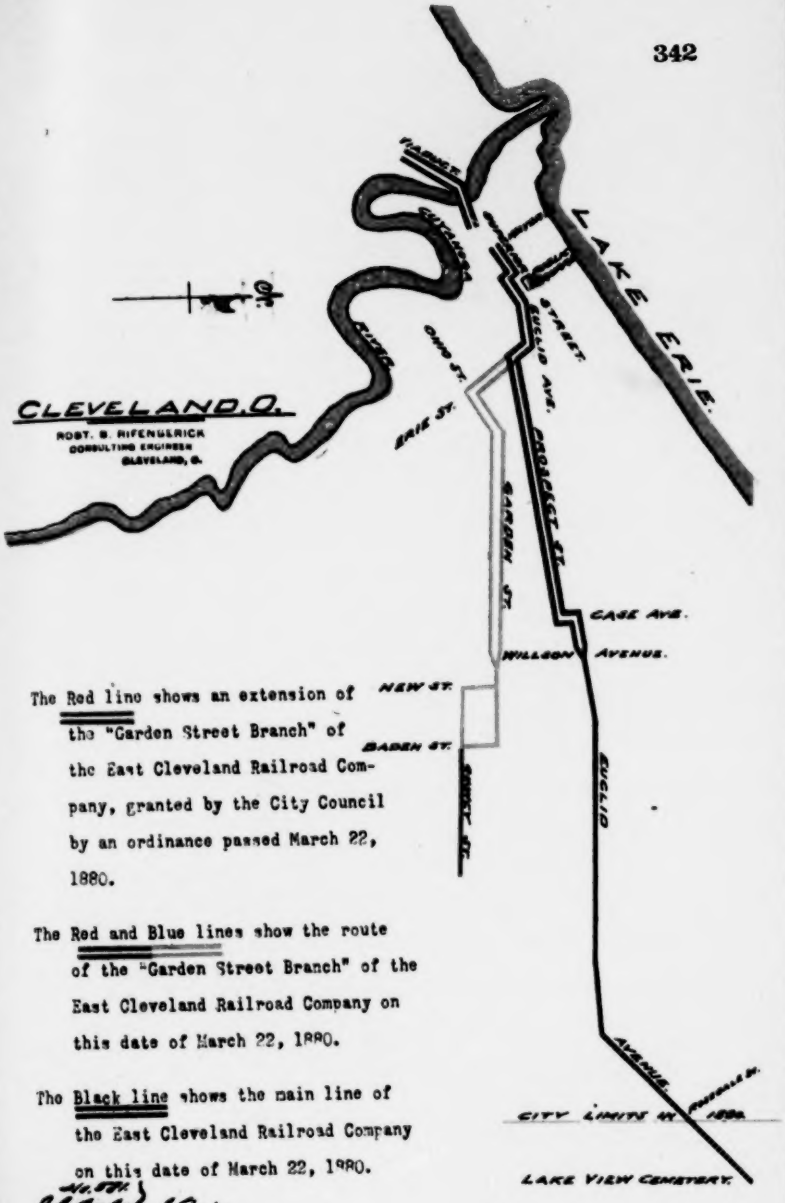
341 An ordinance to permit the East Cleveland Railroad Company to extend the Garden street branch of its railway.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That the East Cleveland Railroad Company be and is hereby authorized and empowered to extend the Garden street branch of its railway from the present track, at the intersection of Baden avenue and Quincy street, in an easterly direction on and along said Quincy street, to the intersection of Lincoln avenue, and to equip and operate the said extension and its Garden street branch for the period of twenty-five (25) years from and after the passage of this ordinance; but with the express condition that no increase of fare shall be charged by said company on any part of its said branch, or of its main line, or of said extention by reason of said extention. This grant is made subject to all ordinances of said City Council now in force, or which may hereafter be duly passed regulating street railroads.

SECTION 2. This ordinance shall take effect and be in force from and after the date of its passage and legal publication.

Passed March 22, 1880.

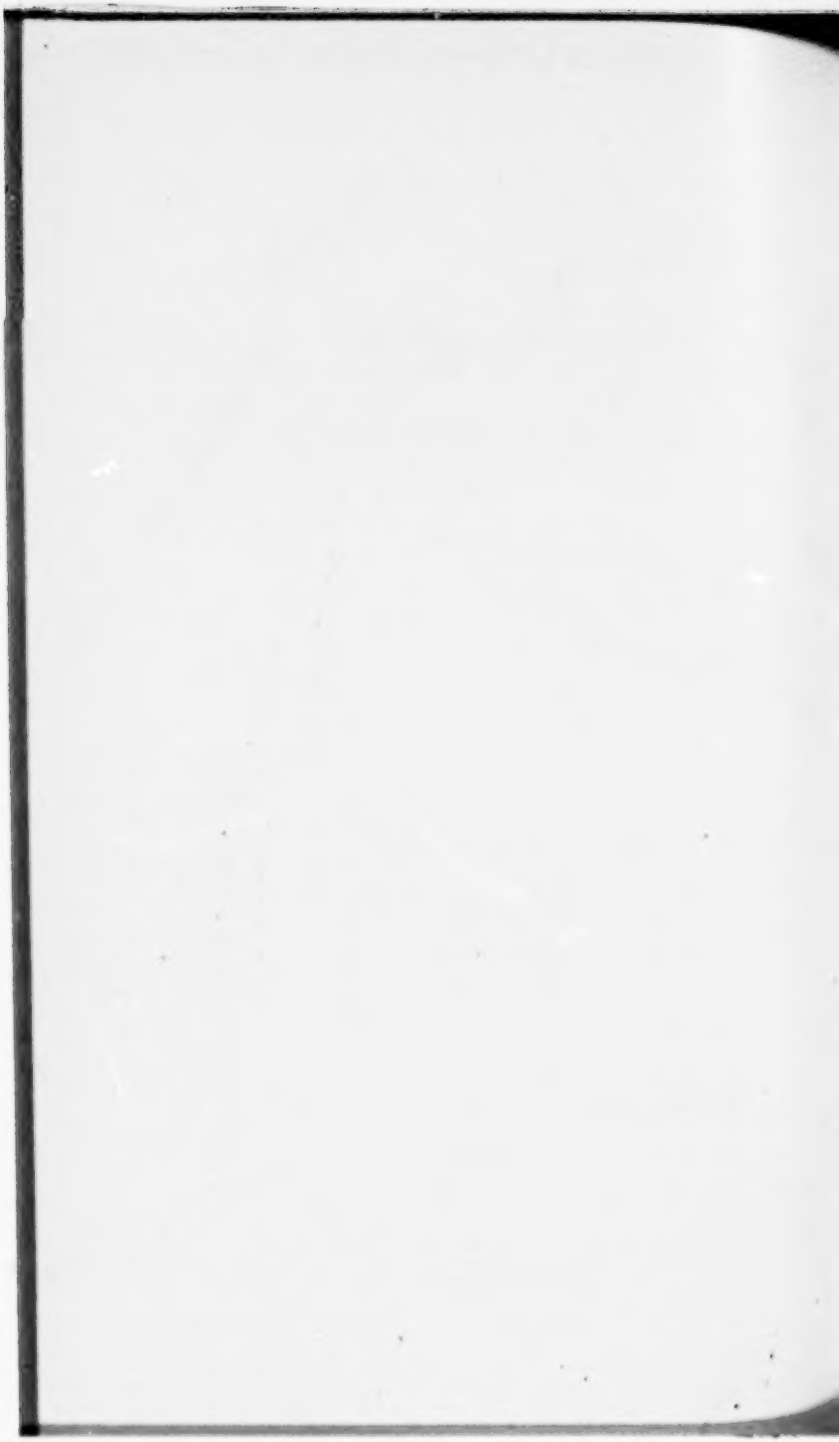
(Here follows map marked page 342.)



The Red line shows an extension of the "Garden Street Branch" of the East Cleveland Railroad Company, granted by the City Council by an ordinance passed March 22, 1880.

The Red and Blue lines show the route of the "Garden Street Branch" of the East Cleveland Railroad Company on this date of March 22, 1880.

The Black line shows the main line of the East Cleveland Railroad Company on this date of March 22, 1880.



343 An ordinance granting to the East Cleveland Railroad Company the right to extend, lay and operate its double track in Euclid avenue from the west line of Willson avenue to the west line of Fairmount street.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That the East Cleveland Railroad Company is hereby granted the right to extend, lay and operate its double track on Euclid avenue from the west line of Willson avenue to the east line of Fairmount street upon *the terms and conditions hereinafter* expressed.

SECTION 2. That said double track shall be so constructed and laid as to leave an equal space between the outer rails of each track and the lines of curbstones on either side of said avenue, and be laid to such grades, and such distance apart, and at such times as shall be directed by the Board of Improvements; and the spaces between the outside rails of the two tracks shall be paved with Medina, N. Y., dressed block sandstone, laid in the same manner as is laid in the street railroad tracks on Prospect street, between Sterling and Case avenues, and the said double track shall be managed and conducted in compliance with and subject to all other ordinances now in force, or which shall be hereafter passed, governing street railroad companies in the City of Cleveland.

SECTION 3. The right herein given is granted upon the express condition, however, that said company shall charge but one fare of not more than five cents for each passenger, between the westerly terminus of said company's road on Superior street, and the city limits, the company shall run through cars at least once every ten minutes during the hours of 6 A. M. and 8 P. M. and that the right of said company to have and operate its said railroad on said Euclid avenue, between the west line of Willson avenue and the city limits, shall terminate on the twentieth day of September, A. D. 1904, with the said renewal of that part of said company's line lying west of said Willson avenue.

344 SECTION 4. That the Council reserves to itself the right to hereafter increase or diminish the rate of fare between the west end of its, said company's, lines in Superior street and the city limits as it may deem justifiable and expedient, and that said company may be required to keep in order the pavement and roadway ten feet in width along its track and the cross-walks to the full width of the streets through which said road passes, under direction of the Street Commissioner.

SECTION 5. That this ordinance shall be in force from and after its passage and legal publication.

Passed April 4, 1883.

345 *Acceptance from the East Cleveland Railroad Company.*

Office of the East Cleveland Railroad Company, #1177 Euclid Avenue.

CLEVELAND, OHIO, *April* 16, 1883.

To the Honorable City Council of the City of Cleveland.

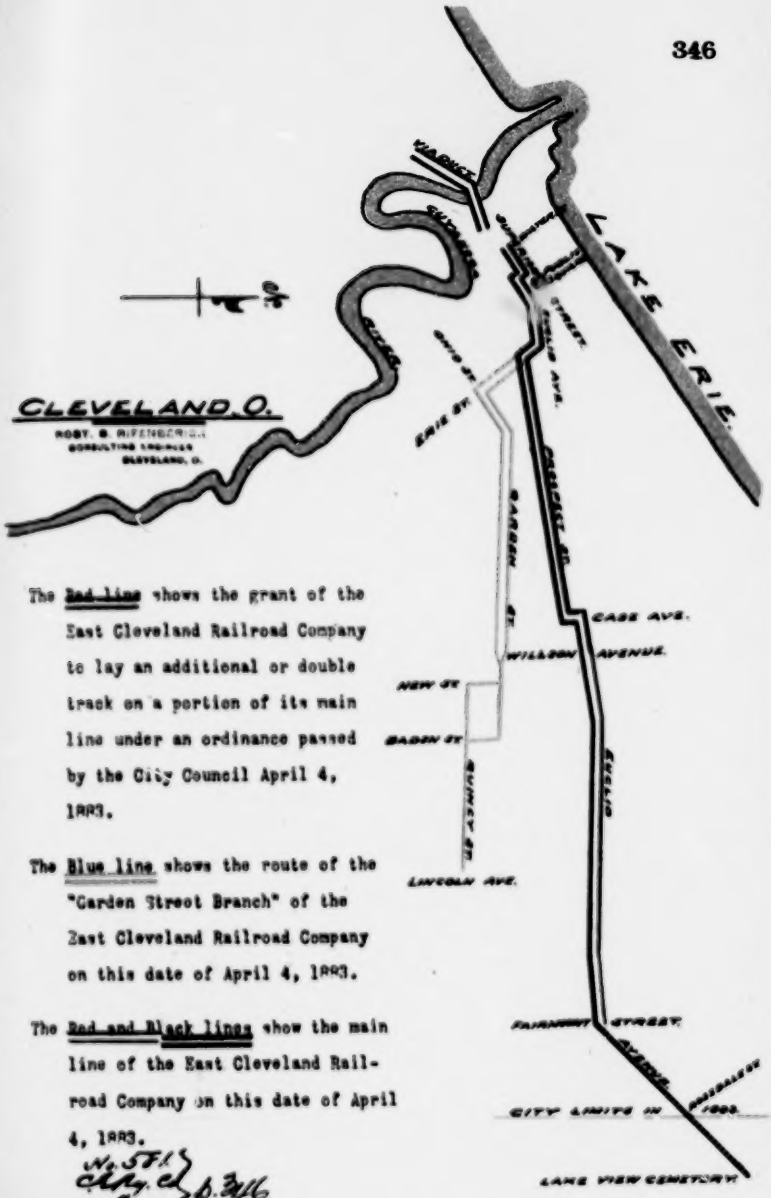
GENTLEMEN: The East Cleveland Railroad Company hereby makes it known to your Honorable Body that it has and does hereby accept the rights and privileges granted it by an ordinance passed on the 4th day of April, A. D., 1883, entitled "An ordinance granting to the East Cleveland Railroad Company the right to extend, lay, and operate its double track in Euclid Avenue, from the west line of Willson Avenue to the east line of Fairmount street."

Respectfully submitted,

THE EAST CLEVELAND R. R. COMPANY,
By A. EVERETT, *President.*

Received April 16th, 1883.

(Here follows map marked page 346.)

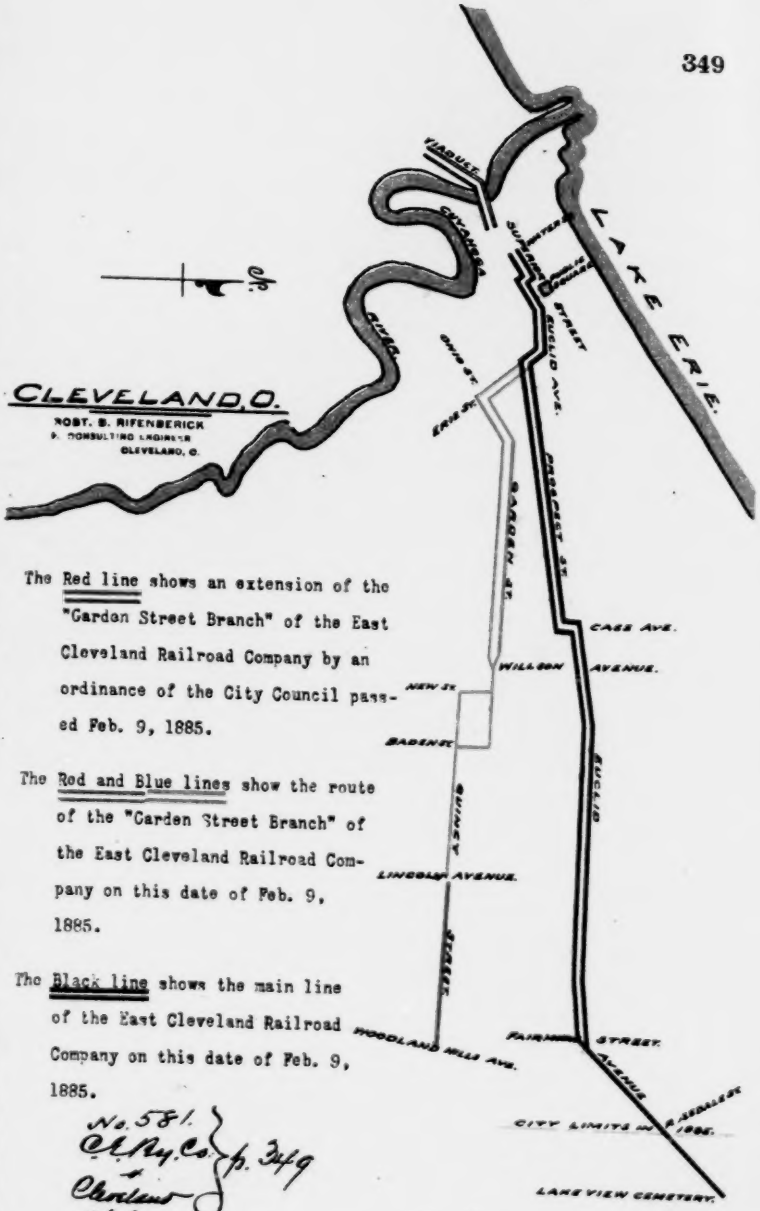


The Red line shows the grant of the East Cleveland Railroad Company to lay an additional or double track on a portion of its main line under an ordinance passed by the City Council April 4, 1883.

The Blue line shows the route of the "Garden Street Branch" of the East Cleveland Railroad Company on this date of April 4, 1883.

The Red and Black lines show the main line of the East Cleveland Railroad Company on this date of April 4, 1883.

No. 5 F 1 3
City Cl. p. 346
Cleveland
Ohio



The Red line shows an extension of the "Garden Street Branch" of the East Cleveland Railroad Company by an ordinance of the City Council passed Feb. 9, 1885.

The Red and Blue lines show the route of the "Garden Street Branch" of the East Cleveland Railroad Company on this date of Feb. 9, 1885.

The Black line shows the main line of the East Cleveland Railroad Company on this date of Feb. 9, 1885.

No. 581.
E. Cl. Ry. Co.
to
Cleveland
et al.
} p. 349

AND TERMINATING WITH THE GRANT FOR THE MAIN LINE,

347 An ordinance to permit the East Cleveland Railroad Company to extend the Garden street branch of its railway.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That the East Cleveland Railroad Company be and is hereby authorized and empowered to extend the Garden street branch of its railway, from the termination of its present track at the intersection of Quincy street and Lincoln avenue in an easterly direction on and along said Quincy street to Woodland Hills avenue and equip and operate said extension as a single track railroad, with all necessary switches, turn-outs and turn-tables in connection with said branch and its main line, but with the express condition that no increase of fare shall be charged by said company on any part of its main line or on said extension by reason of said extension; and further provided that said extension shall be completed and paved between the rails of its tracks, switches and turn-outs of said extension with such material and in such manner as the Board of Improvements may direct, and keep the same in constant good repair at the expense of said company. The entire extension to be at the proper grade and line, subject to the approval of the City Civil Engineer and in operation within six months after the passage of this ordinance. The location and manner of construction of said extension, switches and turn-outs shall be to the satisfaction of the Board of Improvements. This grant is made subject to all ordinances of said City Council now in force or which may hereafter be duly passed regulating street railroads and amendments to this ordinance.

SECTION 2. Whenever the City Council shall deem it necessary to grade or regrade, pave or repave, the whole or any portion of said Quincy street, said company shall take up and relay said tracks at its own expense whenever so ordered by the Board of Improvements and shall do the work of grading or regrading, paving or repaving, or pay to the City the cost of the same at the city's option,
348 of the space between the rails of each and all its tracks, switches, and turn-outs unless in the judgment of the Board of Improvements the pavement in said track at such time shall be at the proper grade and in sufficient good condition.

SECTION 3. That this ordinance shall take effect and be in force from and after its passage and legal publication and the payment by the company of the expense of printing and publishing the same and the filing in the office of the City Clerk a written agreement accepting the terms and conditions thereof.

Passed February 9, 1885.

Acceptance.

CLEVELAND, OHIO, *Feb. 12th,* 1885.

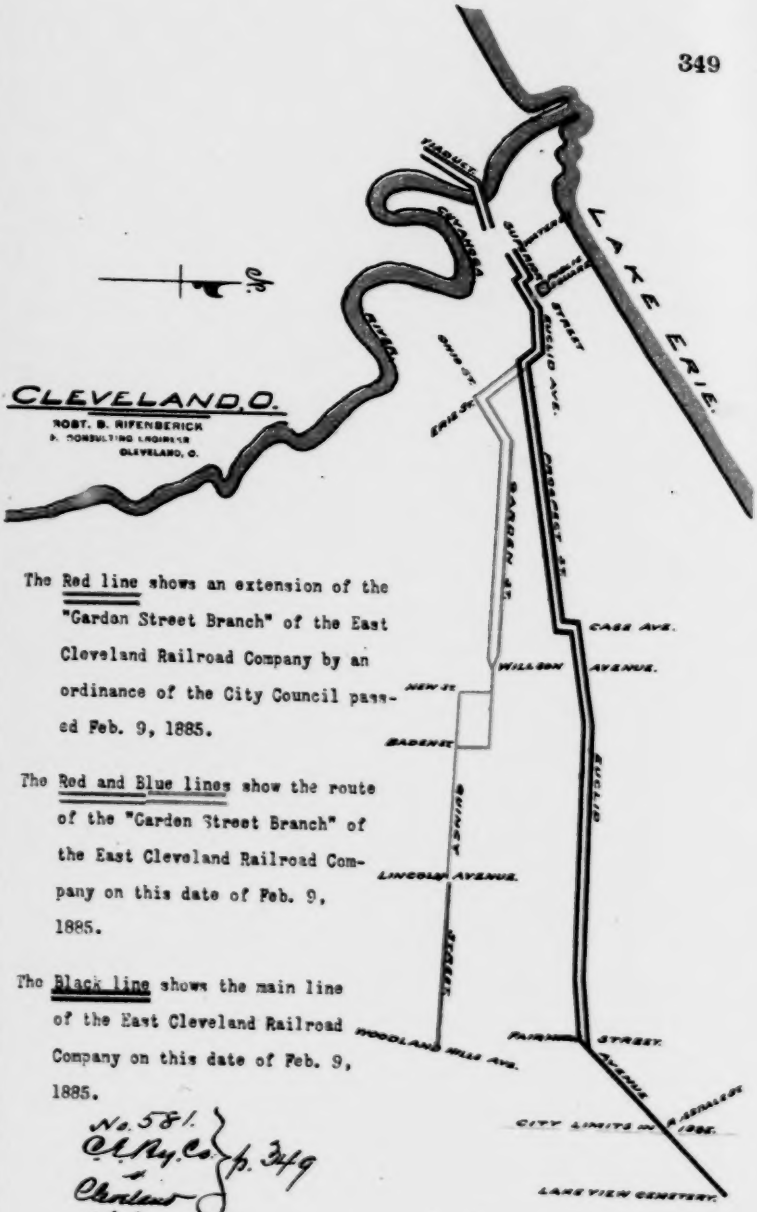
To the Honorable the City Council of Cleveland.

GENTLEMEN: We hereby accept the terms and conditions of Ordinance No. 274, passed by your Honorable Body on Monday, February 9th, 1885.

Very respectfully,

THE EAST CLEVELAND RAILROAD COMPANY,
By A. EVERETT, *President.*

Received Feb. 16th, 1885.



The Red line shows an extension of the "Garden Street Branch" of the East Cleveland Railroad Company by an ordinance of the City Council passed Feb. 9, 1885.

The Red and Blue lines show the route of the "Garden Street Branch" of the East Cleveland Railroad Company on this date of Feb. 9, 1885.

The Black line shows the main line of the East Cleveland Railroad Company on this date of Feb. 9, 1885.

No. 581.
C. I. Ry. Co. } p. 349
Cleveland
Ohio

347 An ordinance to permit the East Cleveland Railroad Company to extend the Garden street branch of its railway.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That the East Cleveland Railroad Company be and is hereby authorized and empowered to extend the Garden street branch of its railway, from the termination of its present track at the intersection of Quincy street and Lincoln avenue in an easterly direction on and along said Quincy street to Woodland Hills avenue and equip and operate said extension as a single track railroad, with all necessary switches, turn-outs and turn-tables in connection with said branch and its main line, but with the express condition that no increase of fare shall be charged by said company on any part of its main line or on said extension by reason of said extension; and further provided that said extension shall be completed and paved between the rails of its tracks, switches and turn-outs of said extension with such material and in such manner as the Board of Improvements may direct, and keep the same in constant good repair at the expense of said company. The entire extension to be at the proper grade and line, subject to the approval of the City Civil Engineer and in operation within six months after the passage of this ordinance. The location and manner of construction of said extension, switches and turn-outs shall be to the satisfaction of the Board of Improvements. This grant is made subject to all ordinances of said City Council now in force or which may hereafter be duly passed regulating street railroads and amendments to this ordinance.

SECTION 2. Whenever the City Council shall deem it necessary to grade or regrade, pave or repave, the whole or any portion of said Quincy street, said company shall take up and relay said tracks at its own expense whenever so ordered by the Board of Improvements and shall do the work of grading or regrading, paving or repaving, or pay to the City the cost of the same at the city's option,
348 of the space between the rails of each and all its tracks, switches, and turn-outs unless in the judgment of the Board of Improvements the pavement in said track at such time shall be at the proper grade and in sufficient good condition.

SECTION 3. That this ordinance shall take effect and be in force from and after its passage and legal publication and the payment by the company of the expense of printing and publishing the same and the filing in the office of the City Clerk a written agreement accepting the terms and conditions thereof.

Passed February 9, 1885.

Acceptance.

CLEVELAND, OHIO, *Feb. 12th,* 1885.

To the Honorable the City Council of Cleveland.

GENTLEMEN: We hereby accept the terms and conditions of Ordinance No. 274, passed by your Honorable Body on Monday, February 9th, 1885.

Very respectfully,

THE EAST CLEVELAND RAILROAD COMPANY,
By A. EVERETT, *President.*

Received Feb. 16th, 1885.

(Here follows map marked page 349.)

350 *An Ordinance.*

An ordinance granting to the East Cleveland Railroad Company the right to extend and operate its double track street railroad in Euclid avenue, between the easterly line of Fairmount street and the easterly limits of the city.

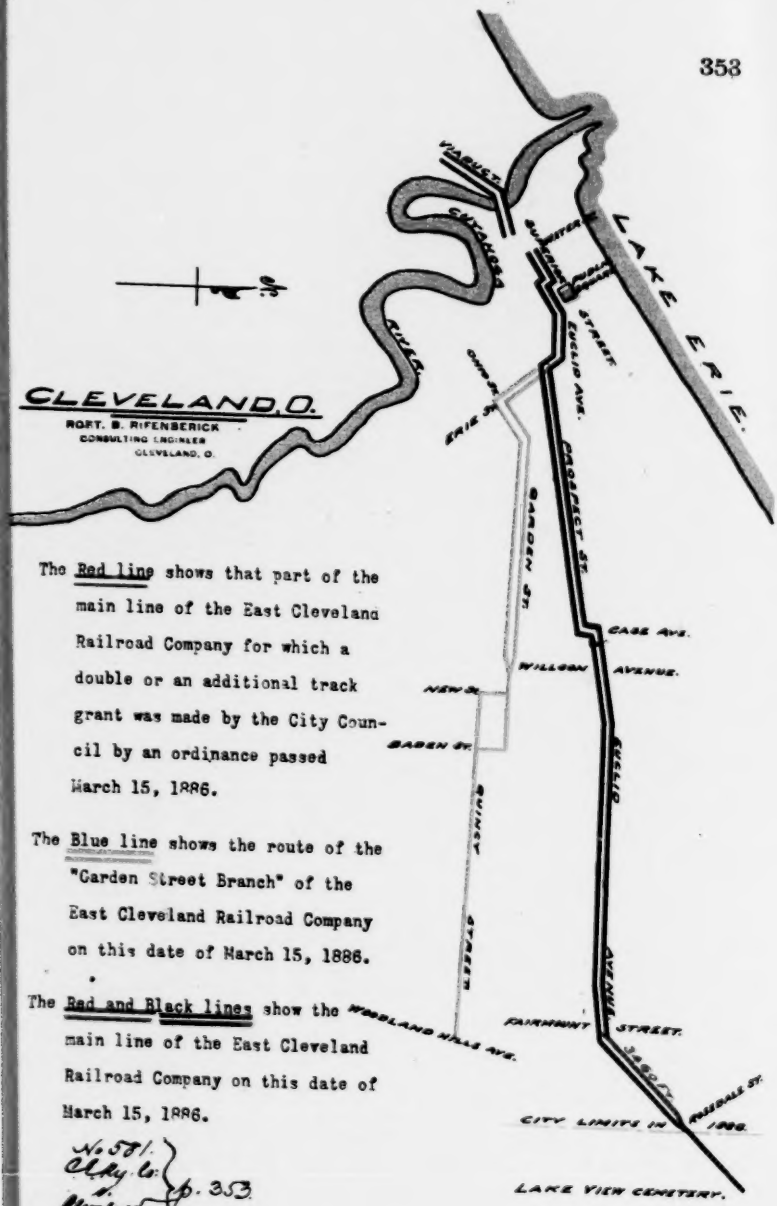
SECTION 1. Be it ordained by the Common Council of the City of Cleveland, That the East Cleveland Railroad Company be and is hereby granted the right to extend, lay and operate its double track street railroad from the easterly line of Fairmount street to the easterly limits of the city, upon the terms and conditions herein specified.

SECTION 2. That said track shall be constructed in a thorough and substantial manner, four (4) feet apart, along the center of said avenue, between the said points, the center line of the four foot space to be on the center line of Euclid avenue, and to be laid in such manner, to such grades, and at such time as the Board of Improvements shall direct.

SECTION 3. That the spaces between the rails of each track, together with the spaces between the tracks, shall be paved with broken or split boulders, laid with broken face up, and the spaces between the boulders filled with asphaltic cement, as specified by the city for dressed block stone paving, the said boulder paving to be done at the expense of sail railroad company, and at the same time as the balance of said roadway is paved, the material, manner of construction and workmanship to be subject to the direction and approval of the Board of Improvements. The said boulder pavement shall be kept in constant good repair by said company, to the acceptance of said board. Said railroad company shall grade the space of fourteen (14) feet wide from outside to outside of its rails, also at its own expense. Said double track, when completed, shall be managed and conducted at all times subject to the conditions of this ordinance, and any amendments hereto, and all ordinances now in force and that may be hereafter passed, governing street railroads, so far as the same are applicable.

351 SECTION 4. That the rights, as herein granted and conferred, are upon the express conditions, however, that said company shall charge and collect but one fare of not more than five (5) cents for each passenger one way, in either direction, between the easterly limits of the city on Euclid avenue, and the westerly terminus of said company's tracks at the intersection of Superior and Bank streets; and upon the further condition that said company shall run through cars over said line between said points last named in each direction, as the public convenience in the opinion of the Common Council, by resolution expressed, may require.

SECTION 5. That the rights herein granted to lay and operate a double track street railroad in Euclid avenue, between Fairmount street and the easterly limits of the city, shall cease and terminate upon the 20th day of September, A. D. 1904, as provided for said company's tracks in Euclid avenue, west of Fairmount street.



The Red line shows that part of the main line of the East Cleveland Railroad Company for which a double or an additional track grant was made by the City Council by an ordinance passed March 15, 1886.

The Blue line shows the route of the "Garden Street Branch" of the East Cleveland Railroad Company on this date of March 15, 1886.

The Red and Black lines show the main line of the East Cleveland Railroad Company on this date of March 15, 1886.

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City Co.
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Cleveland
Ud.
p. 353

SECTION 6. That said railroad company shall reimburse the city after the completion of said work, the cost of all engineering done by said city in the construction of said tracks and boulder pavement.

SECTION 7. That said company shall, within thirty days after the passage of this ordinance, file with the City Clerk, a copy of a resolution of said company accepting the terms and conditions hereof, and pay into the City Treasury the cost of printing and publishing this ordinance, otherwise the rights herein granted shall be forfeited and void.

SECTION 8. That this ordinance shall be in force from and after its passage and legal publication.

Passed by the Common Council March 15, 1886.

352 *Acceptance.*

CLEVELAND, OHIO, *March* 29, 1886.

To the Honorable the Common Council of the City of Cleveland:

GENTLEMEN: We would hereby respectfully accept the terms and conditions of Ordinance No. [illegible]ssed by your Honorable Body on the 15th inst. entitled "A[illegible]ce granting to the East Cleveland Railroad Company the [illegible] extend and operate its double-track street railroad in Euclid [illegible]nue between the easterly line of Fairmount street and the easterly limits of the city."

Respectfully submitted,

THE EAST CLEVELAND RAILROAD CO.,
By A. EVERETT, *President.*

Received March 29th, 1886.

(Here follows diagram marked page 353.)

354 *Ordinance No. 85.*

An Ordinance to permit the East Cleveland Railroad Company and Brooklyn Street Railroad Company to extend their tracks and operate their railroads on Water, Lake and Bank Streets.

SECTION 1. Be it ordained by the Common Council of the City of Cleveland, That the East Cleveland Railroad Company and the Brooklyn Street Railroad Company be and they are hereby authorized and empowered to extend their tracks and lines of railroad from their line northerly on and along Water street, to its intersection with Lake street; thence easterly on and along said Lake street to its intersection with Bank street; thence southerly on and along Bank street to Superior street, and making a junction with their said line in Superior street; and to equip and operate said extension as a double track railroad, with all necessary switches and turn-outs, in connection with their main lines.

SECTION 2. The said extension shall be operated so that all cars run thereon shall be kept moving in a continuous circuit in connection with their main lines except when stopping to take on or leave off passengers or for other necessary purposes.

SECTION 3. That this grant is made subject to all and singular the terms and conditions of the ordinance under which each of said companies is now operating, or any amendments hereto or thereto, and of the general street railroad ordinance of the city now or hereafter in force, or amendments thereto, and in case af failure or neglect or otherwise on the part of said East Cleveland Railroad Company and Brooklyn Street Railroad Company, its successors or assigns, to perform all and singular the conditions of this ordinance, or amendments hereto, the privilege hereby granted shall become void and of no effect, and shall cease upon the adoption of an ordinance of the Common Council to that effect.

355 SECTION 4. This grant is given on the express condition that no additional fare shall be charged by the said companies by reason of said extension, and shall expire on the part of each company with the grant for its main line respectively.

SECTION 5. That the city reserves the right to grant the joint use of all or any portion of the tracks laid or used in said extension to any company or companies upon such terms as to compensation as may be mutually agreed upon by such company or companies, and the companies owning tracks of said extension or as the Common Council shall determine to be just and equitable in the event of failure of said companies so to agree; Provided, That the East Cleveland Railroad Company and the Brooklyn Street Railroad Company and any company availing itself of the right to a joint use of the track of the extension herein described, shall, between the hours of six twenty o'clock a. m. and nine o'clock p. m. of each day, cause at least one car of its main line to be run over such extension as often as once in every ten minutes.

SECTION 6. That said extension shall be constructed, equipped, and operated within sixty days from the date of the passage of this ordinance. In laying and completing the tracks of said extension in Water and Bank streets and the connection with other tracks, the paving taken up shall be relaid in a workmanlike manner, to the entire satisfaction of the Board of Improvements, and all stone that may be required to make up any deficiency shall be of the same quality as the balance of the paving, and the tracks of that portion of said extension in Lake street shall be laid by said companies at such times during or in advance of the paving of Lake street, as now contemplated as the Board of Improvements may direct, and the work of paving between the rails of said tracks in Lake street shall be done by the city under and in accordance with the contemplated contract for paving Lake street from Water to Ontario streets, and said East Cleveland Railroad Company, and Brooklyn Street Railroad Company shall pay to the City Treasurer immediately after the completion of the paving between the rails of the tracks
356 in Lake Street and before any cars run thereon, the cost as fixed by the Board of Improvements of the said paving between the rails of the tracks in Lake street or so much of the cost thereof as is not waived by the abutting property owners. Also the said East Cleveland Railroad Company, and Brooklyn Street Railroad Company shall pay to the city at the same time the extra cost as fixed by the Board of Improvements of paving Lake street between Water and Bank streets as now contemplated by reason of laying of said tracks in Lake street, and if at any time all or any portion of either or both of said tracks shall be abandoned or not used by said companies for the purpose herein contemplated, such abandoned or unused tracks or portions of said tracks shall upon notice from the Board of Improvements be removed by said companies from said street and the space occupied by said rails and paving between the same shall be repaired and put in as good condition as the balance of the streets upon which said tracks were removed.

SECTION 7. That this ordinance shall be in force from and after its passage and legal publication and the filing with the City Clerk of a written acceptance of the terms and conditions of this ordinance and the payment to the City Auditor of the expenses of printing and advertising the same.

Passed by the Common Council July 16, 1886.

Acceptance.

CLEVELAND, OHIO, *Aug. 5th*, 1886.

To the Honorable the Common Council of the City of Cleveland.

GENTLEMEN: We hereby respectfully accept the terms and conditions of an Ordinance numbered 85 and entitled "An Ordinance to permit the East Cleveland Railroad Company and Brooklyn Street

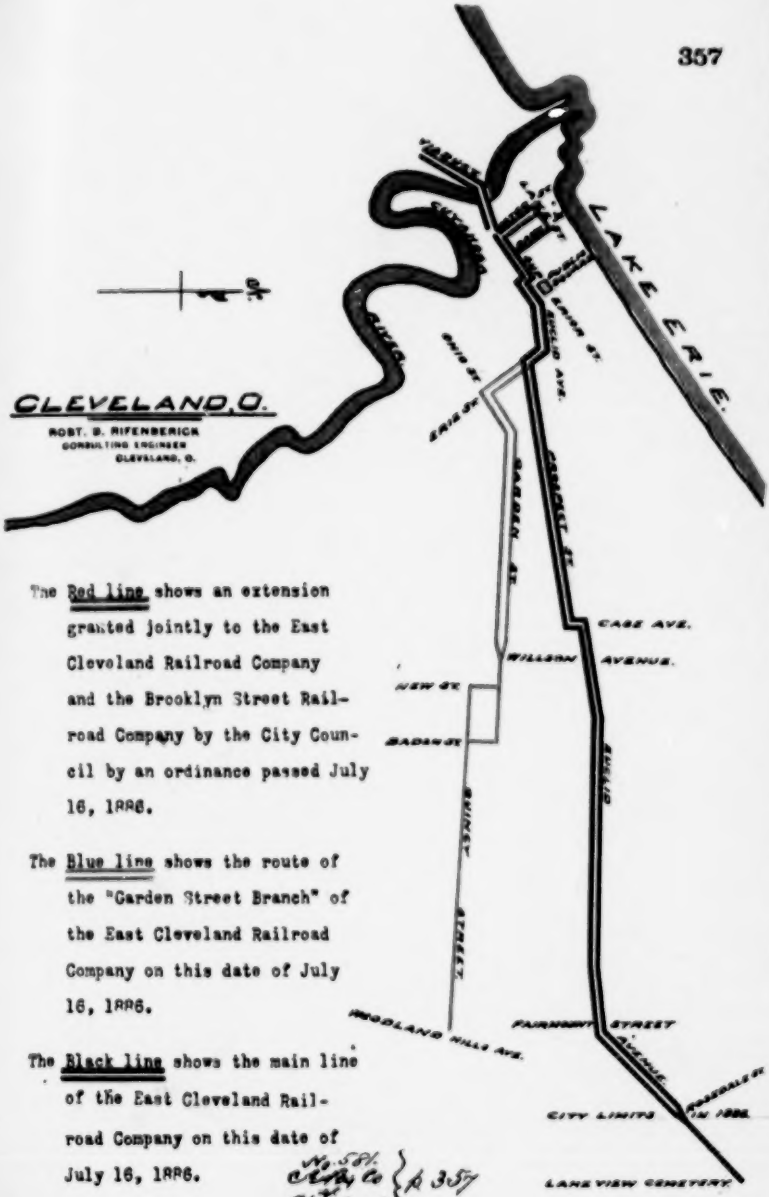
Railroad Company to extend their tracks and operate their railroads on Water, Lake and Bank streets," passed by your Honorable Body on July 16th, 1886.

Very respectfully submitted,

THE EAST CLEVELAND RAILROAD CO.,
By A. EVERETT, *President.*
A. L. JOHNSTON,
Superintendent Brooklyn Street Railroad Co.

Received Aug. 6th, 1886.

(Here follows map marked p. 357.)



The Red line shows an extension granted jointly to the East Cleveland Railroad Company and the Brooklyn Street Railroad Company by the City Council by an ordinance passed July 16, 1886.

The Blue line shows the route of the "Garden Street Branch" of the East Cleveland Railroad Company on this date of July 16, 1886.

The Black line shows the main line of the East Cleveland Railroad Company on this date of July 16, 1886.

No. 581. City Co. of Cleveland et al. } P. 357

358 *Ordinance No. 8.*

An ordinance to permit the East Cleveland Railroad Company to extend the Garden street branch of its railway.

SECTION 1. Be it ordained by the Comman Council of the City of Cleveland, That the East Cleveland Railroad Company be and is hereby authorized and empowered to extend the Garden street branch of its railway from the intersection of its present track with Baden avenue, upon Garden street, in an easterly direction along and upon said Garden street, to the easterly line of Lincoln avenue, and equip and operate said extension as a single or double track railroad, with all necessary switches, turnouts and turn-tables as per plan on file in the office of the Board of Improvements in connection with said branch and its main line, and terminating with the grant for the Garden street main line, but with the express condition that no increase of fare shall be charged by said company on any part of its main line or on said extension by reason of said extension; and further provided, that said extension shall be completed and paved between the rails of its tracks, switches and turn-outs of said extension, with boulder paving, laid under the direction and to the approval of the Board of Improvements, and to be maintained in constant good repair at the expense of said company; the entire extension to be at the proper grade and line, subject to the approval of the City Civil Engineer, and in operation within one year after the passage of this ordinance; and upon failure so to do the rights herein granted may be forfeited at the option of the City. The location and manner of construction of said extension, switches and turn-outs shall be to the satisfaction of the Board of Improvements. This grant is made subject to all ordinances of said City now in force, or which may hereafter be passed, regulating street railroads and amendments thereto and to this ordinance.

SECTION 2. Whenever the Common Council shall deem it necessary to grade or regrade, pave or repave, the whole or any portion of said Garden street, or construct sewers, lay or relay any waste pipes,
said company shall take up and relay said tracks at its own
359 expense whenever so ordered by the Board of Improvements,
and shall do the work of grading or regrading, paving or repaving, or pay to the city the cost of same, at the city's option, of the space between the rails of each and all its tracks, switches and turn-outs, unless in the judgment of the Board of Improvements, the pavement in said tracks, at such time shall be at the proper grade and in sufficiently good condition.

SECTION 3. That this ordinance shall take effect and be in force from and after its passage and legal publication, and the payment by the company of the expense of printing and publishing the same

and the filing in the office of the City Clerk a written agreement accepting the terms and conditions thereof.

Passed June 17, 1887.

W. M. BAYNE,
Pres. Board of Councilmen.
JAMES LAWRENCE,
Pres. Board of Aldermen.

Approved June 18, 1887.

D. D. BABCOCK, *Mayor.*

CHAS. P. SALEN,
City Clerk.

360 CLEVELAND, OHIO, *June* 20, 1887.

To the Honorable Common Council of the City of Cleveland.

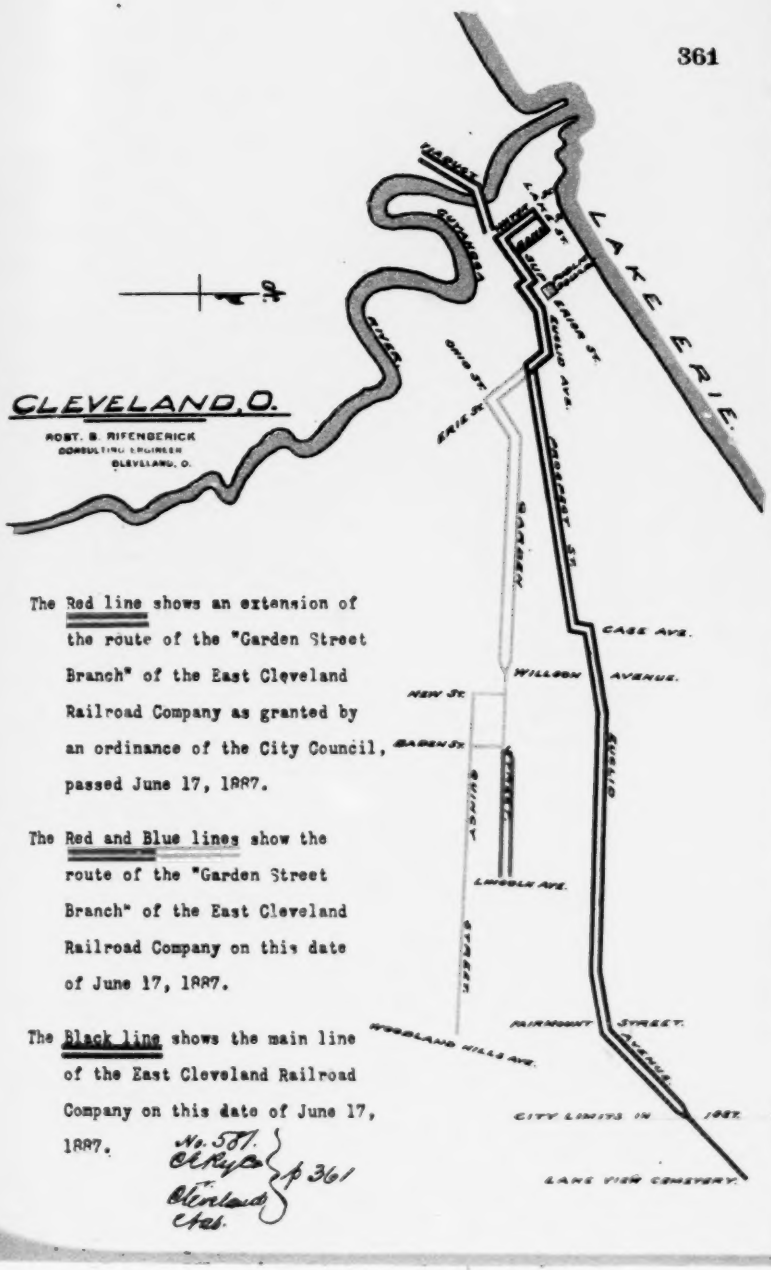
GENTLEMEN: We would hereby respectfully accept the terms and conditions of Ordinance No. 8, entitled "An Ordinance to permit the East Cleveland Railroad Company to extend the Garden Street Branch of its railway from Baden to Lincoln Avenue.

Respectfully submitted,

THE EAST CLEVELAND RAILROAD CO.,
By A. EVERETT, *President.*

Received June 20, 1887.

(Here follows map marked page 361.)

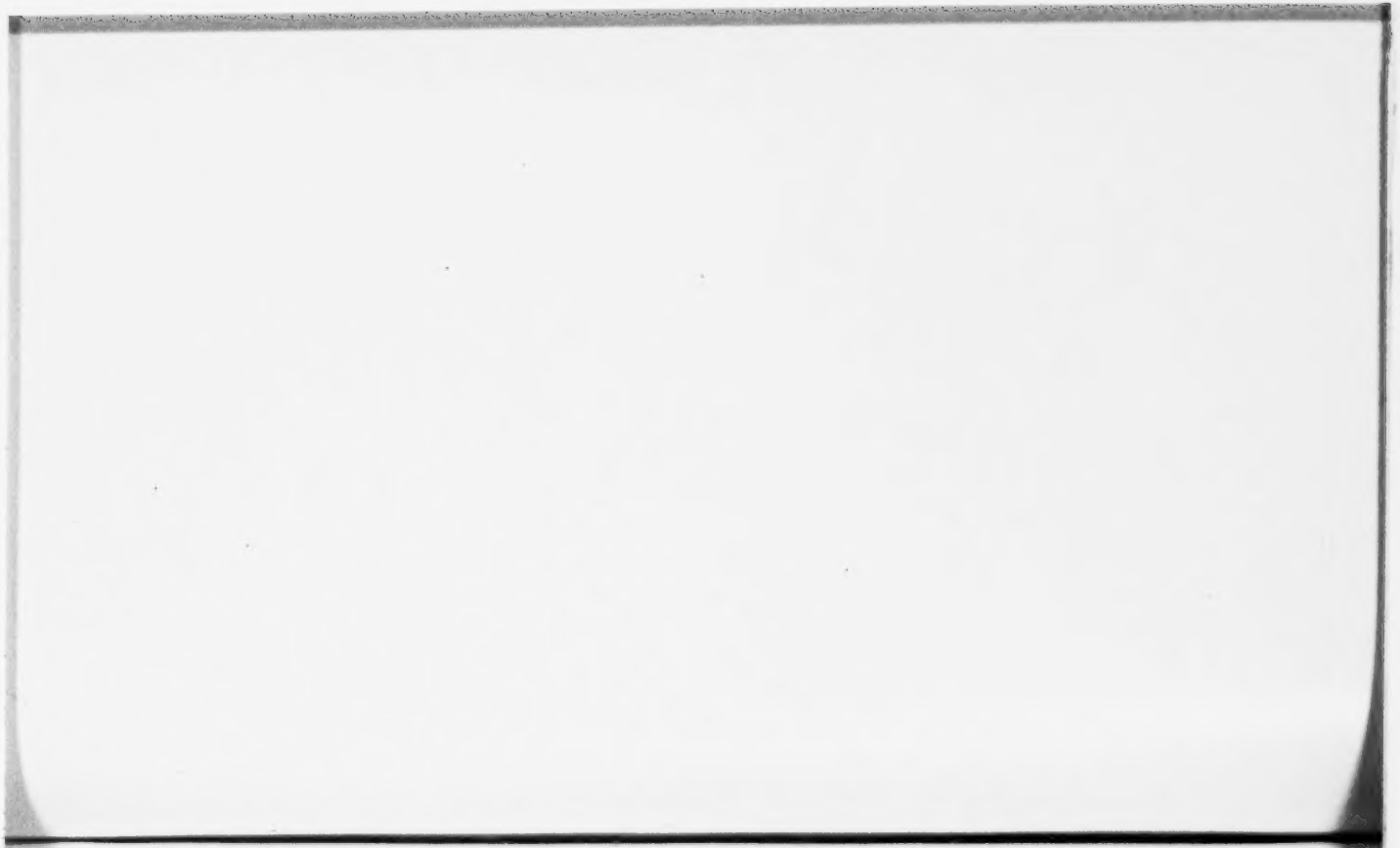


The Red line shows an extension of the route of the "Garden Street Branch" of the East Cleveland Railroad Company as granted by an ordinance of the City Council, passed June 17, 1887.

The Red and Blue lines show the route of the "Garden Street Branch" of the East Cleveland Railroad Company on this date of June 17, 1887.

The Black line shows the main line of the East Cleveland Railroad Company on this date of June 17, 1887.

No. 587.
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Cleveland Cas.



362 *Ordinance No.* 387.

An ordinance granting the East Cleveland Street Railway Company the right to construct and operate an electric street railway on Euclid and Cedar avenues.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That, whereas, the East Cleveland Railroad Company, operating a street railway under and by virtue of certain ordinances of the city upon Euclid and also upon Cedar avenue in said city, have, by a communication to the Common Council of date May 14, 1888, signified its willingness and desire to change the motive power upon said Euclid avenue and Cedar avenue between certain points in such communication designated; and

Whereas, there is a desire on the part of the people residing in the easterly portion of the city for a more convenient and rapid mode of transit and that an electric system be substituted for animal power for the movement of cars; wherefore the East Cleveland Railroad Company is hereby granted permission to erect and maintain poles and wires and the necessary appliances and fixtures for conducting currents of electricity for the purpose of transmitting and producing motive power to propel and operate the cars upon the following named streets in said city, to wit: Euclid avenue from Willson avenue easterly to the city limits, Cedar avenue from a point near the Cleveland & Pittsburgh Railroad Company's right of way in said avenue easterly to a point about 1,500 feet east of Fairmount street. The erection of such poles and the placing of wires thereon shall be under the supervision of and subject to the control of the City Civil Engineer; such poles shall not be over twenty-five feet in height above the ground and shall not be over six inches in diameter at the base, shall be painted in dark color, and repainted from time to time as the Board of Improvements may direct; they shall be set 125 feet apart, except otherwise expressly permitted by the City Civil Engineer; such poles shall be placed at such points near the curb stone as shall be designated by the City Civil Engineer;
363 should it become necessary, in the prosecution of any work by the city, that such poles should be temporarily moved, such removal shall be made by said company and such poles shall be reset at its own cost, without any claim or damage therefore on the part of said company, and such company shall use such precautions for safety from time to time as the Board of Improvements may direct or require.

SECTION 2. The running of cars on any part of the lines of such company may be suspended by the Board of Improvements for such reasonable time as may at any time be necessary on account of repairs of streets or sewers or other public improvements, and whenever it may be necessary to have any track taken up for the purpose aforesaid, the same shall be taken up and relaid at the expense of said Railroad Company.

SECTION 3. Said railroad company shall at all times hereafter defend, keep harmless and indemnified the City of Cleveland, of and

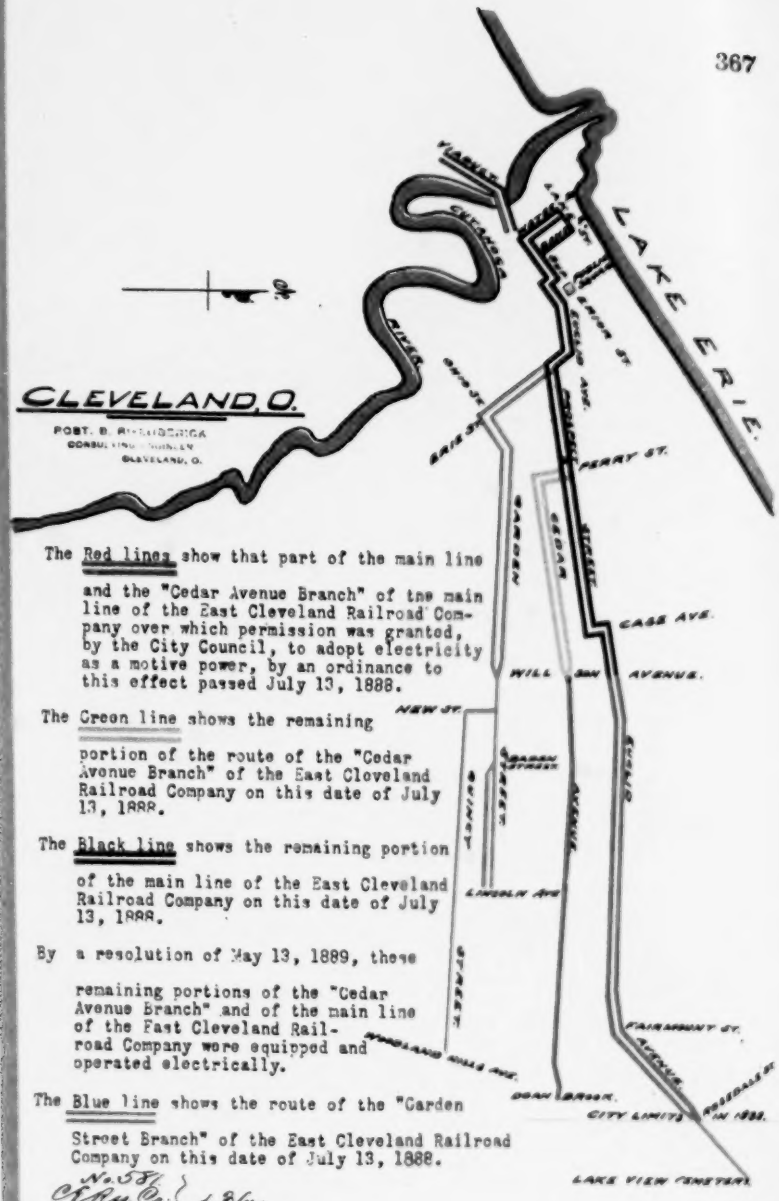
from all damages, lawful claims and demands for injuries to persons or property, costs and expenses, to which said City may be subjected or made liable by any proceeding at law or in equity or otherwise growing out of the grant of the privileges in this ordinance granted, or out of the exercise and enjoyment of the same by said company.

SECTION 4. Said company shall at all times conform to such rules and regulations as may from time to time be made by the Council and approved by the Board of Improvements as to the rate of speed it may run its cars on the streets heretofore designated, and while the cars of said company are in motion or about to start, a bell shall be sounded at such times as may be necessary to warn persons of danger.

SECTION 5. The said permission herein given is upon the condition that this grant shall be exercised within the period of six months from the passage hereof, and is also granted with all the
364 privileges and subject to all the conditions of this ordinance and of the several ordinances by which the East Cleveland Railroad Company is permitted to lay rails and operate cars thereon in the streets of the City of Cleveland, so far as not inconsistent herewith and to the ordinance governing streets and railroads and all the ordinances in amendment thereof and in addition thereto, "And that said railroad company shall, whenever it becomes necessary to pave or repave the streets along its line, pave or repave and keep in constant repair for a single track, 7 feet of the pavement, and for a double track 16 ft."

SECTION 6. The privilege of constructing the electric system and the operation of its lines, as hereinbefore provided, is granted in consideration of the improved facilities hereby contemplated and the large expenditure necessary to secure the same, and shall be in force for a period of twenty-five years from and after the date of the passage of this ordinance upon it main and Cedar avenue lines, but nothing herein shall be so construed as to authorize any increase of present fares for transportation over any portion of said company's lines; Provided, that if the said East Cleveland Railroad Company shall, by said electrical system, fail to provide a mode of transit which shall be deemed satisfactory to the Board of Improvements, or if, from any cause, said company shall fail to extend the said electrical system over their entire main and Cedar Avenue lines within eighteen months from date of passage of this ordinance, then said ordinance shall be null and void so far as it relates to extension of charter.

SECTION 7. Said Railroad Company shall, in writing, accept the permission and privileges hereby granted and agree to comply with, adopt and abide by all the provisions, conditions and restrictions upon which the same are granted within thirty days after the passage of this ordinance, and shall, within said time, file the said writ-
ing with the City Clerk, otherwise this ordinance shall be
365 null and void, and such acceptance shall be deemed an agreement of the said railroad company with said city to perform all and singular all the matters and things required of said company to be performed under this ordinance.



The Red lines show that part of the main line and the "Cedar Avenue Branch" of the main line of the East Cleveland Railroad Company over which permission was granted, by the City Council, to adopt electricity as a motive power, by an ordinance to this effect passed July 13, 1888.

The Green line shows the remaining portion of the route of the "Cedar Avenue Branch" of the East Cleveland Railroad Company on this date of July 13, 1888.

The Black line shows the remaining portion of the main line of the East Cleveland Railroad Company on this date of July 13, 1888.

By a resolution of May 13, 1889, these remaining portions of the "Cedar Avenue Branch" and of the main line of the East Cleveland Railroad Company were equipped and operated electrically.

The Blue line shows the route of the "Garden Street Branch" of the East Cleveland Railroad Company on this date of July 13, 1888.

No. 58 C.R.Ry. Co. } p. 367
Cleveland, O.

SECTION 8. Whenever the Council shall so require the said company shall use the same system as herein provided on the entire length of their main and Cedar avenue lines.

SECTION 9. This ordinance shall take effect and be in force from and after its passage and legal publication.

Passed July 13, 1888.

M. M. HOBART,
Pres. Board of Councilmen.
JAMES LAWRENCE,
Pres. Board of Aldermen.

Approved July 14th, 1888.
CHARLES P. SALEN,
City Clerk.

366 *Acceptance.*

CLEVELAND, OHIO, *July* 17, 1888.

To the City Clerk of the City of Cleveland.

DEAR SIR: At a meeting of the directors of the East Cleveland Railroad Company held this day, the following resolution was unanimously adopted, viz: "The East Cleveland Railroad Company hereby accepts the permission and privileges granted by city ordinance No. 387" entitled "An Ordinance granting the East Cleveland Railway Company the right to construct and operate an electric street railway on Euclid and Cedar avenues," passed by the Common Council on July 13, 1888, and approved by the Mayor on July 14, 1888, and agree to abide by the provisions and conditions therein contained."

A. EVERETT, *President.*

Correct attest:
H. A. EVERETT, *Secretary.*

Received July 23, 1888.

(Here follows map marked page 367.)

368 *Resolution.*

By Mr. BEIDLER:

Whereas, By the terms and conditions of Ordinance No. 387, passed by the Common Council July 13, 1888, it is stipulated that the East Cleveland Railroad Company shall, whenever required by the Council, use the same system of motive power on the entire length of its main and Cedar Avenue lines, as is authorized and permitted by said Ordinance, from Willson avenue easterly; and

Whereas, the use of electricity as a motive power on such street railroad has fully demonstrated its practicability and necessity. It has also substantially solved the question of rapid transit, and in the opinion of the Council its use should be extended as contemplated in said ordinance; therefore be it

Resolved, That the East Cleveland Railroad Company be, and it is hereby authorized and required as soon as practicable to extend the use of such motive power over its main and Cedar Avenue lines to the westerly termini thereof, subject however, to the requirements and conditions of said Ordinance No. 387.

Adopted May 13, 1889.

Motion.

By Mr. FAULHABER:

To consider the vote by which the resolution "By Mr. Beidler, directing the East Cleveland Railroad Company to use electricity as a motive power on its main and Cedar avenue lines," was adopted. Lost—yeas 9, nays 24.

May 20, 1889.

369 *Acceptance.*

CLEVELAND, OHIO, *May* 17th, 1889.

To the Honorable the City Council of the City of Cleveland, Ohio.

GENTLEMEN: At a meeting of the Board of Directors of this company held this day, it was unanimously agreed to accept the resolution passed by your Honorable Body on May 13th, 1889, as notified by the City Clerk, viz:

"Resolved, That the East Cleveland Railroad Company be and it is hereby required and authorized, as soon as practicable, to extend the use of such motive power over its main and Cedar avenue lines to the westerly termini thereof, subject, however, to the requirements and conditions of said ordinance No. 387." And that we shall proceed at once to comply with said resolution.

Respectfully submitted,

THE EAST CLEVELAND R. R. CO.,
By A. EVERETT,
President, Office 1154 *Euclid Ave.*

370 *Resolution.*

Whereas, on the 10th day of January 1889, The East Cleveland Railroad Company made application to the Board of Commissioners of Cuyahoga County, Ohio, for permission to occupy the Euclid road from the easterly corporate limits of the City of Cleveland to the entrance to Lake View Cemetery continuously with two railroad tracks instead of one track as now occupied by it, for the purpose of operating thereon cars for the carriage of passengers—said cars to be operated either by electricity (*an* now in operation) or by horse power—and whereas said petitioners have obtained the consent in writing of a sufficient number of the owners of the frontage to make more than the amount required by law, to the said occupation, and also to the operation of said cars by electricity, using overhead wires raised on poles, and whereas said Euclid road is already occupied by the Cleveland and Willoughby Plank Road Company—and whereas certain citizens of East Cleveland Township have heretofore remonstrated against the granting of said application which has been considered by the said Board—therefore

Resolved that the application of the East Cleveland Railroad Company as aforesaid be and the same is hereby granted—subject to all the rights of the said Plank-road Company—on the following terms and conditions: First, that before entering upon said road and occupying the same under this permission, said petitioners shall obtain and file with the Board the written consent of said Plank-road Company—Second, that said petitioners shall at their own expense and in a good and workmanlike manner, subject to the approval of this Board, place their said two tracks in the middle of said road, and also grade and widen the roadway of said street for vehicles to the width of 42 feet, making a carriage drive or road upon both sides of their said double track railroad at least 14 feet in width on each side, and said plank road to be laid within said 14 feet on the northerly side of said double track, and if in so widening and grading said road it becomes necessary to cut down or remove trees standing
371 within the limits of said road, authority is hereby given to said petitioner to cut down and remove such trees as this Board would have authority to remove in improving said streets, and will interfere with the proper use of said streets in making said improvements.

Third, that said petitioner shall use and lay only flat rails in said two tracks—and shall so grade, pave and improve all portions of said road lying between the rails of each of said tracks and between said tracks as to afford a good road or passage for vehicles, wagons, carriages, etc., to travel along or across said tracks, and keep and maintain the same in good condition.

Fourth, that the changes and work herein contemplated shall be done and completed within one year from this January 14, 1889.

Fifth, that the term of this grant shall be only twenty-five years from this date.

Sixth, that any and all cost, expense and damages, are to be paid

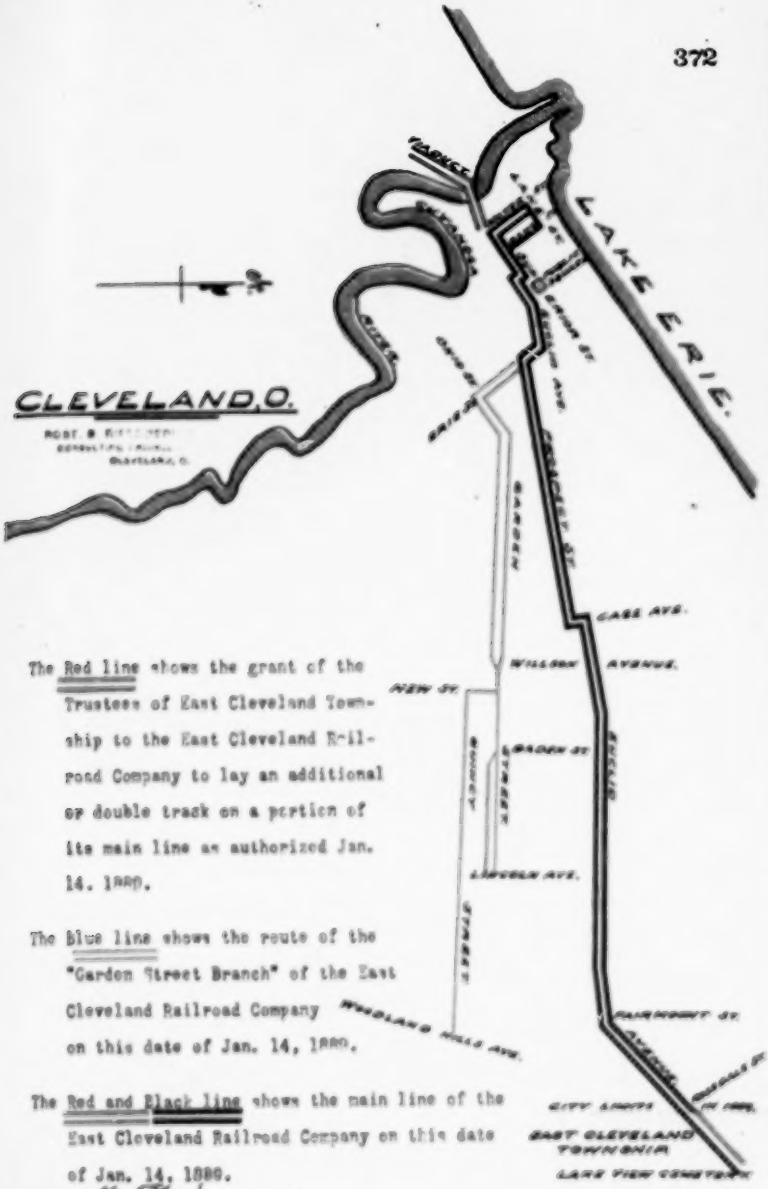
by the petitioner, and the County is to be held harmless by the petitioner from damages by reason of the construction and laying of the said double track.

Seventh, that the petitioners are to construct and maintain all necessary ditches, drains and culverts—if any.

Eighth, that the grading, paving and all and singular the proposed improvement except the tracks of the petitioner are to be under the supervision of the County Surveyor, and done to the satisfaction of surveyor and this board.

Granted January 14, 1889.

(Here follows map marked page 372.)

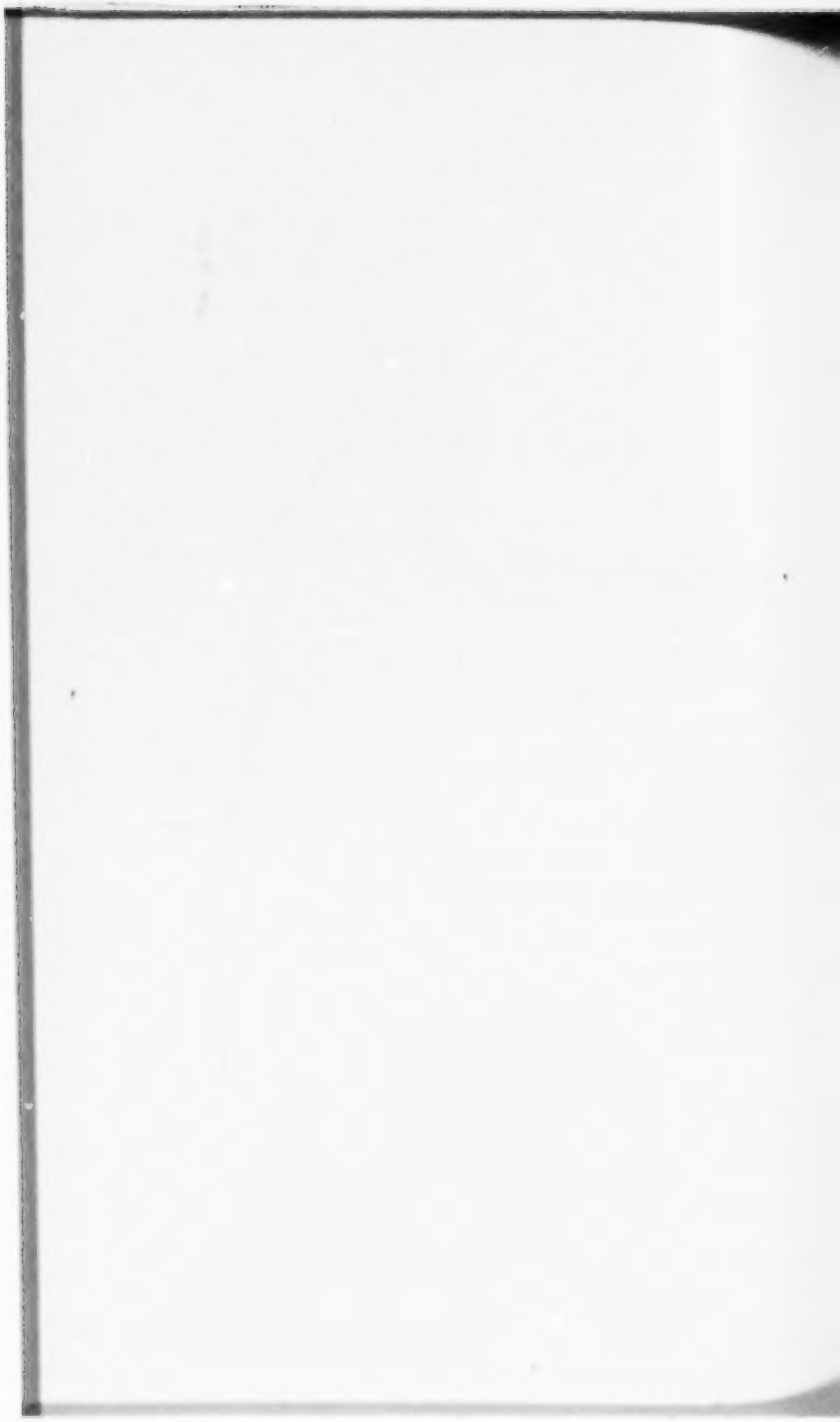


The Red line shows the grant of the Trustees of East Cleveland Township to the East Cleveland Railroad Company to lay an additional or double track on a portion of its main line as authorized Jan. 14. 1889.

The Blue line shows the route of the "Garden Street Branch" of the East Cleveland Railroad Company on this date of Jan. 14, 1889.

The Red and Black line shows the main line of the East Cleveland Railroad Company on this date of Jan. 14, 1889.

No. 372
City of Cleveland



373 *Ordinance No.* 1124.

An ordinance granting to the East Cleveland Railroad Company the right to substitute electric motive power for horse power upon its Garden street branch.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, that the East Cleveland Railroad Company, its successors or assigns, is hereby authorized and granted the right to operate its Garden street branch by electricity, *i. e.,* from the intersection of Prospect and Erie streets, along Erie street to Ohio street, along Ohio street to Brownell street, along Brownell street to Garden street, and along Garden street to Lincoln avenue; also along New street from Garden street to Quincy street, and along Quincy street to Woodland Hills avenue, and authority is hereby granted said company to erect and maintain on said streets all necessary poles and wires and the necessary appliances and fixtures for the conducting of electric currents to operate by electric power the said Garden street branch during the term of its present grant for said Garden street branch. All poles erected under this ordinance to be of iron unless otherwise ordered by the Board of Improvements.

SECTION 2. The erection of such poles and the placing thereon of the necessary wires and appliances shall be under the supervision of and subject to the control of the City Civil Engineer and the Board of Improvements, and said company shall pay for the cost and expense of such inspection; such poles shall be of such height and diameter as required by the Board of Improvements, shall be painted in dark color, and repainted from time to time as directed. They shall be set 125 feet apart except otherwise expressly permitted by the City Civil Engineer, and at such places near the curbstone as shall be designated by the City Civil Engineer. Should it
374 become necessary in the prosecution of any work by the city that such poles should be temporarily moved, such removal shall be made by said company, and such poles shall be reset at its own cost, without any claim of damage therefor on the part of said company, and such company shall use such precautions for safety from time to time as the Board of Improvements may direct or require.

SECTION 3. The running of cars on any part of the lines of such company may be suspended by the Board of Improvements for such reasonable time as may at any time be necessary on account of repairs of streets or sewers, or other public improvements, and whenever it may be necessary to have any track taken up for the purpose aforesaid, the same shall be taken up and relaid at the expense of said company.

SECTION 4. Said company shall at all times conform to such rules and regulations as may from time to time be made by the Council and approved by the Board of Improvements, as to the rate of speed it may run its cars on the streets heretofore designated, and while the cars of said company are in motion or about to start, a bell shall be sounded at such times as may be necessary to warn persons of danger.

SECTION 5. The said permission herein is upon the condition that

this grant shall be exercised over all said portions of said streets within the period of one year from the passage hereof, and upon the further condition that the said East Cleveland Railroad Company shall run all cars operated by said company upon any of its lines or branches around the "loop," so-called, or give passengers free transfers from any of said company's lines to cars that do run around the loop, subject to all the conditions of this ordinance, and of the several ordinances by which the East Cleveland Rail-
375 road Company is permitted to lay rails and operate cars thereon in the streets of the City of Cleveland, so far as not inconsistent herewith and to the ordinance governing street railroads and all the ordinances in amendment thereof and in addition thereto and hereto; and further provided, that when said East Cleveland Railroad Company shall pave said 14 feet said company shall pave at its own expense said space with the same kind of pavement as the rest of the street when said street shall be paved.

SECTION 6. Said Railroad Company shall, in writing, accept the permission and privilege hereby granted, and agree to comply with, adopt and abide by all the provisions, conditions and restrictions upon which the same are granted, within thirty days after the passage of this ordinance, and shall within said time file the said writing with the City Clerk, otherwise this ordinance shall be null and void; and such acceptance shall be deemed an agreement of the said railroad company with said city to perform all and singular all the matters and things required of said company to be performed under this ordinance.

SECTION 7. This ordinance shall take effect and be in force from and after its passage and legal publication.

Passed March 10, 1890.

F. O. SPENCER,
Pres. of the Council.

H. H. BURGESS,
City Clerk.

376 *Acceptance.*

CLEVELAND, OHIO, *April 4th*, 1890.

To the Honorable the City Council of the City of Cleveland.

GENTLEMEN: We hereby respectfully accept the authority granted us in Ordinance No. 1124, passed by your Honorable Body March 10th, 1890, and entitled "An Ordinance granting the East Cleveland Railroad Company the right to substitute electric motive power for horse power upon its Garden street branch," and respectfully agree to abide by the provisions, conditions, limitations and restrictions contained in said Ordinance.

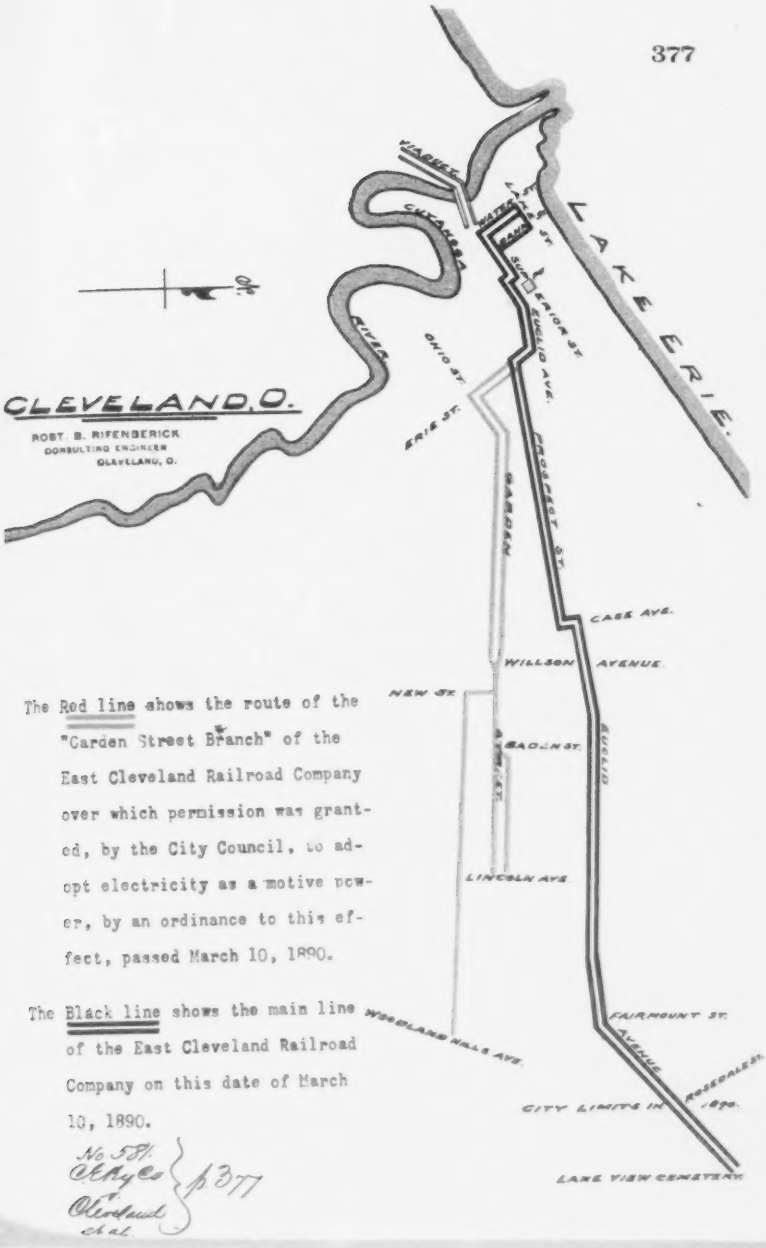
Respectfully submitted,

THE EAST CLEVELAND RAILROAD CO.,
By A. EVERETT, *Pres.*

Attest: H. A. EVERETT, *Secretary.*

Received April 8th, 1890.

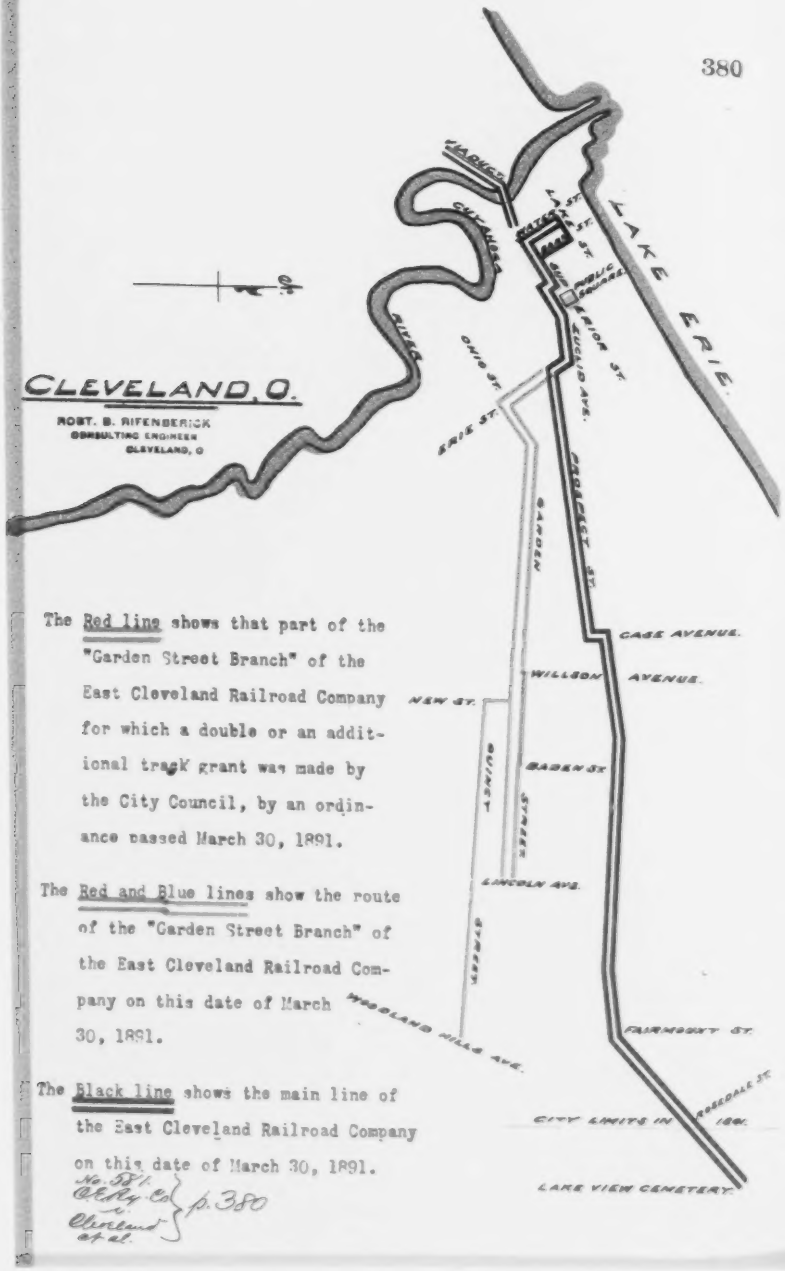
(Here follows diagram marked page 377.)



The Red line shows the route of the "Garden Street Branch" of the East Cleveland Railroad Company over which permission was granted, by the City Council, to adopt electricity as a motive power, by an ordinance to this effect, passed March 10, 1890.

The Black line shows the main line of the East Cleveland Railroad Company on this date of March 10, 1890.

No 58.
A.A. Ayres
Cleveland
Ohio.
p 377



The Red line shows that part of the "Garden Street Branch" of the East Cleveland Railroad Company for which a double or an additional track grant was made by the City Council, by an ordinance passed March 30, 1891.

The Red and Blue lines show the route of the "Garden Street Branch" of the East Cleveland Railroad Company on this date of March 30, 1891.

The Black line shows the main line of the East Cleveland Railroad Company on this date of March 30, 1891.

No. 58 1/2
C.R.Ry. Co.
vs.
Cleveland
et al.
p. 380

378 An ordinance to grant the East Cleveland Railroad Company the right to construct and operate a second or additional track upon Central avenue from the east line of Willson avenue to the right of way of the Cleveland & Pittsburgh R. R. Co.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That the East Cleveland Railroad Company, its successors or assigns, be and it is hereby authorized and empowered to lay and operate a second or additional track in and upon Central avenue from the east line of Willson avenue to the Cleveland & Pittsburgh Railroad tracks, and to connect said tracks herein authorized with the tracks now in and upon Central avenue at Willson avenue and at the Cleveland & Pittsburgh Railroad tracks.

SECTION 2. Said company shall pave the space between the outer rails of said double track with the same material, and laid in the same manner, as is in contemplation by the City of Cleveland for the remainder of the roadway, at the time said tracks are built, under the directions and to the satisfaction of the Board of Improvements, and one foot additional outside the rails when the street is paved.

SECTION 3. Said railroad company shall in writing, accept the permission and privilege hereby granted, agree to comply with, adopt and abide by, all the provisions, conditions and restrictions upon which the same are granted, with thirty (30) days after the passage of this ordinance, and shall within said time file the said writing with the City Clerk, otherwise this ordinance shall be null and void, and such acceptance shall be deemed a contract of the said railroad company with said city to perform all and singular the matters and things required to be performed in this ordinance.

SECTION 4. The right herein granted shall be valid until the expiration of the grants for the said company's main line.

379 This ordinance shall be in force from and after its passage and legal publication, and the payment by said company of the expense of publishing the same.

Passed March 30, 1891.

F. P. SPENCER,
Pres. of the Council.

H. H. BURGESS,
City Clerk.

(Here follows map marked page 380.)

381 An ordinance to grant the East Cleveland Railroad Company permission to lay an additional or second track, in Quincy street from New street to Woodland Hills avenue.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, that the East Cleveland Railroad Company, its successors and assigns, be and is hereby authorized and empowered to lay and operate a second or additional track in and upon Quincy street, from New street to Woodland Hills avenue, and to connect the tracks herein authorized with the tracks now laid upon New street, as per plat accompanying the petition of said company.

SECTION 2. Said company shall pave the space between the outer rails of said double track with dressed block Medina stone pavement, laid under the city's specifications, and the paving of said tracks shall be done under the direction of the Board of Improvements, and whenever the city or property holders shall pave the roadway outside said double tracks and the said Railroad Company shall pay to the City the cost of grading and paving for one foot in width of said street on each side of said double tracks, from New street to Woodland Hills avenue.

SECTION 3. That in case of failure, by neglect or otherwise, on the part of the said East Cleveland Railway Company, its successors and assigns, to perform all and singular the conditions of this ordinance, or the general ordinances of the City governing street railways now or hereafter in force and amendments thereto and hereto, the privilege herein granted shall become void and of no effect, and shall cease upon the passage of an ordinance to that effect. The right herein granted shall be valid until the expiration of the grants for said company's tracks on said Quincy street, east of Lincoln avenue, to wit: July 13, 1913.

SECTION 4. This ordinance shall be in force from and after its passage and legal publication and the payment by said company of the expense of publishing the same and the filing in the office of the City Clerk a written acceptance of the terms and conditions hereof.

382 Passed April 20, 1891.

F. O. SPENCER,
Pres. of the Council.

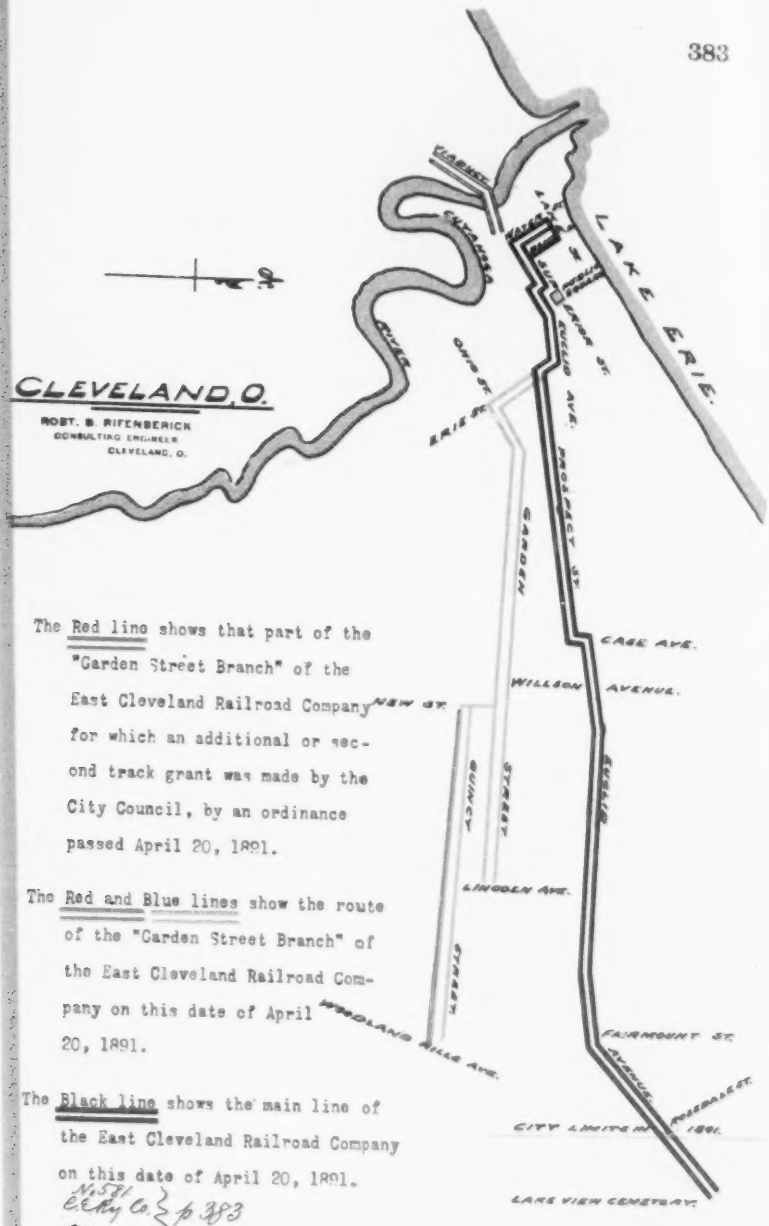
H. H. BURGESS,
City Clerk.

Acceptance.

CLEVELAND, OHIO, *April* 23, 1891.

To the Honorable the City Council of the City of Cleveland.

GENTLEMEN: We hereby respectfully accept the terms, conditions, and restrictions of Ordinance passed by your Honorable Body on April 20th, 1891, numbered 1780 and entitled, "An Ordinance to



The Red line shows that part of the "Garden Street Branch" of the East Cleveland Railroad Company for which an additional or second track grant was made by the City Council, by an ordinance passed April 20, 1891.

The Red and Blue lines show the route of the "Garden Street Branch" of the East Cleveland Railroad Company on this date of April 20, 1891.

The Black line shows the main line of the East Cleveland Railroad Company on this date of April 20, 1891.

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Cleveland

grant the East Cleveland Railroad Company permission to lay an additional or second track in Quincy street, from New street to Woodland Hills avenue" by order of the Board of Directors.

Respectfully submitted,

THE EAST CLEVELAND RAILROAD COMPANY,
By A. EVERETT, *President.*

Attest: H. A. EVERETT, *Secretary.*

Received April 27, 1891.

(Here follows map marked page 383.)

384 *Communication.*

CLEVELAND, OHIO, *May* 22, 1893.

To the Honorable City Council of the City of Cleveland.

GENTLEMEN: The Cleveland Electric Railway Company was organized on the 25th day of March, by the consolidation of the East Cleveland Railroad Company and the Broadway and Newburgh Street Railway Company. Subsequently it was further enlarged by consolidation on the 24th day of April, 1893, with it of the Brooklyn Street Railroad Company and the South Side Street Railroad Company. These two consolidations were made under advice of counsel, and believed by the officers and stockholders of the respective companies to be legal and valid in all respects. In as much as some question seems to have arisen as to the intention of the Cleveland Electric Railroad Company, the company desires to state to you officially that it does not claim any rights greater than the constituent companies forming the organization; that it intends to obey all ordinances to which each and all of the constituent companies were subject; that it has, since such consolidation has been effected, issued transfer checks to all persons desiring them, to enable such persons to have a continuous ride from any East Side line to any South Side or West Side line, and from any South or West Side line of the company to any East Side line, for one fare, and will continue such system of transfers where it cannot better accommodate its patrons by such through lines as it may establish; that it disclaims all intention of charging more than one fare for any such continuous ride; and that its aim has been, and will be, to give its patrons vastly improved service and accommodation by reason of such consolidation.

Very respectfully,

THE CLEVELAND ELECTRIC RAILWAY CO.,
By HORACE E. ANDREWS, *Vice Pres.*

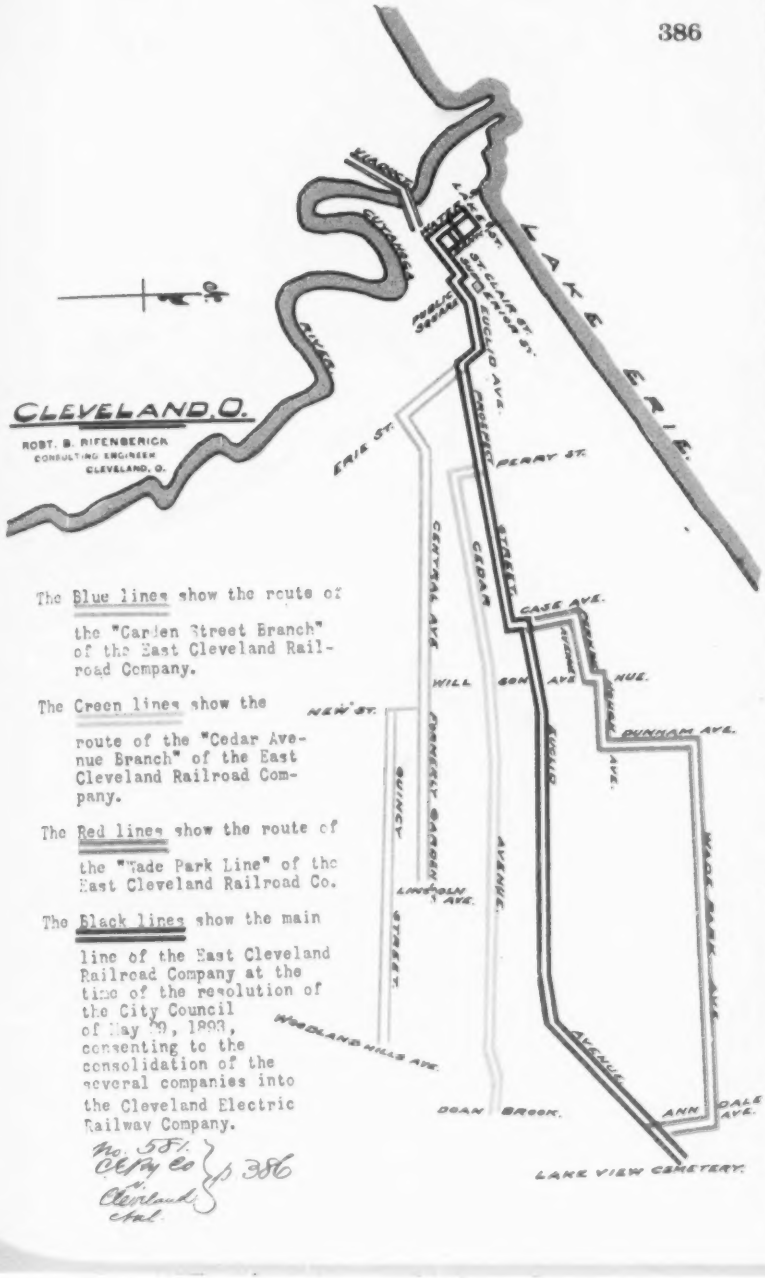
Referred to the Committees on Ordinances, Judiciary, Streets and Railways and Corporation Counsel May 22, 1893.

385 *Resolution.*

By Mr. O'BRIEN:

Resolved, That the Council hereby consents to the consolidation of the East Cleveland Railroad Company, The Broadway & Newburgh Street Railroad Company, the Brooklyn Street Railroad Company and the South Side Street Railroad Company under the name of the Cleveland Electric Railway Company, under the following terms and conditions:

That only one fare shall be charged for a continuous ride on or over any line of railway formerly owned by any other of said constituent companies within the limits of the city of Cleveland; and



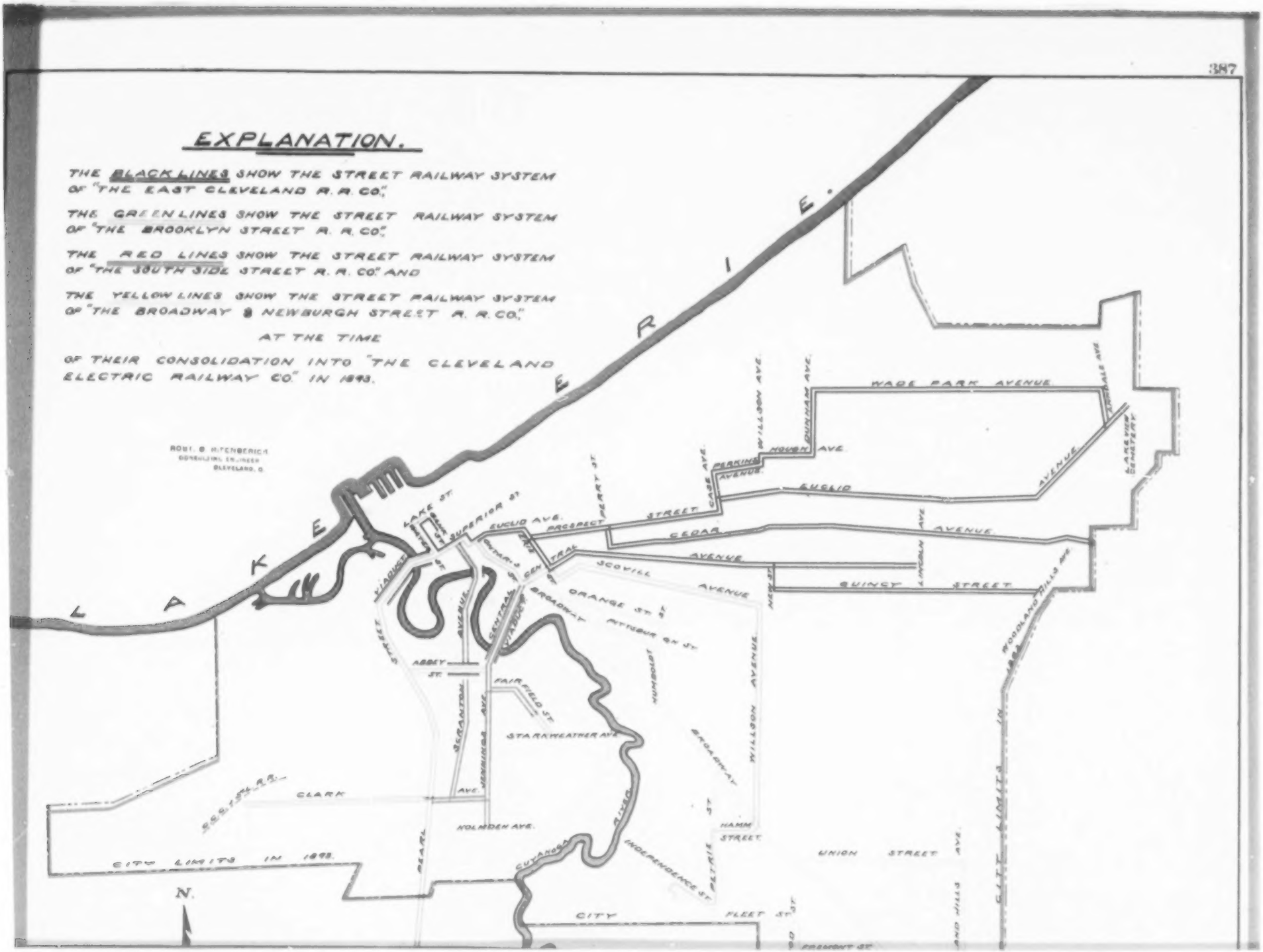
The Blue lines show the route of the "Garden Street Branch" of the East Cleveland Railroad Company.

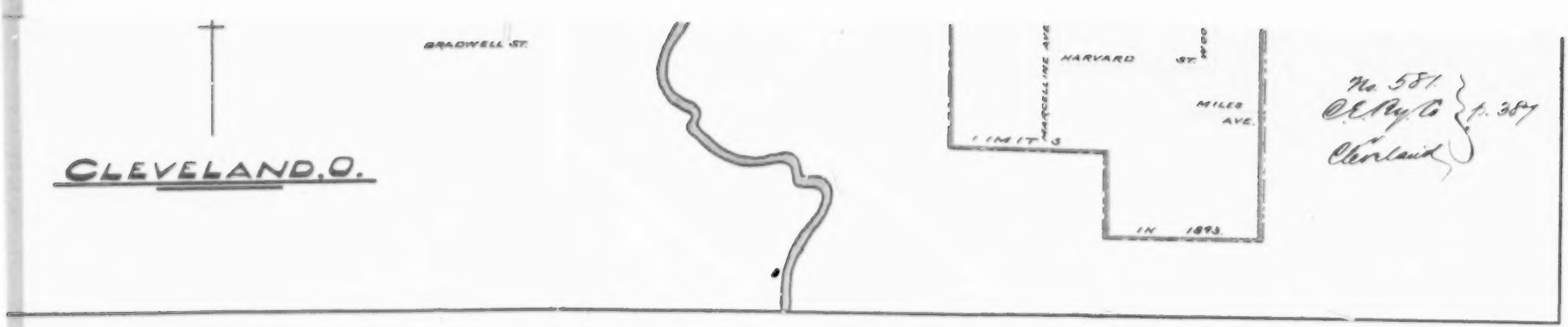
The Green lines show the route of the "Cedar Avenue Branch" of the East Cleveland Railroad Company.

The Red lines show the route of the "Wade Park Line" of the East Cleveland Railroad Co.

The Black lines show the main line of the East Cleveland Railroad Company at the time of the resolution of the City Council of May 29, 1893, consenting to the consolidation of the several companies into the Cleveland Electric Railway Company.

No. 551. City Co } p. 386
N. Cleveland Stat.


EXPLANATION.
THE BLACK LINES SHOW THE STREET RAILWAY SYSTEM OF "THE EAST CLEVELAND R. R. CO."
THE GREEN LINES SHOW THE STREET RAILWAY SYSTEM OF "THE BROOKLYN STREET R. R. CO."
THE RED LINES SHOW THE STREET RAILWAY SYSTEM OF "THE SOUTH SIDE STREET R. R. CO." AND
THE YELLOW LINES SHOW THE STREET RAILWAY SYSTEM OF "THE BROADWAY & NEWBURGH STREET R. R. CO."
AT THE TIME
OF THEIR CONSOLIDATION INTO "THE CLEVELAND ELECTRIC RAILWAY CO." IN 1893.
ROBT. B. RITENBERICK
CONSULTING ENGINEER
CLEVELAND, O.
LAKE ERIE
WADE PARK AVENUE
EUCLID AVENUE
CEDAR AVENUE
QUINCY STREET
SCOVILL AVENUE
ORANGE ST.
ABBEY ST.
FAIR FIELD ST.
STARKWEATHER AVE.
CLARK AVE.
HOLMDEN AVE.
HAMM STREET
UNION STREET
FLEET ST.
CITY LIMITS IN 1893.
N.


CLEVELAND, O.
BRADWELL ST.
HARVARD ST.
MARCELLUS AVE.
MOAB
MILES AVE.
LIMITS
IN 1893
No 581
O.E. Ry Co
Cleveland
p. 387

passengers on any of such lines paying one fare shall be entitled, without extra or additional charge, to be transferred to any other of said lines and have a continuous ride thereon for said single fare. The said The Cleveland Electric Railway Company shall within ten days after the adoption of this resolution, file with the City Clerk, in writing, an acceptance of the terms and conditions herein and an agreement to perform the same; otherwise this resolution shall be null and void.

Adopted May 29, 1893—Yeas 12, nays 7.

Acceptance.

CLEVELAND, OHIO, *May* 29, 1893.

The Honorable, The City Council of the City of Cleveland.

GENTLEMEN: We hereby accept the terms and conditions of the Resolution adopted by your Honorable Body, May 29th, 1893, respecting the operation of our lines in the City of Cleveland, and agree to perform the same.

THE CLEVELAND ELECTRIC RAILWAY CO.,
By HORACE E. ANDREWS, *Vice President.*

Received May 29th, 1893.

(Here follow maps marked pp. 386 and 387.)

388

No. 3128.

An ordinance granting the Cleveland Electric Railway Company the right to extend and operate its double track street railroad in Prospect street, from Erie street to Ontario street, and along certain parts of Seneca, Lake, and Ontario streets.

SECTION 1. Be it ordained by the Council of the City of Cleveland, That the Cleveland Electric Railway Company is hereby granted permission to extend its double track street railroad on and along Prospect street, from its present tracks at the intersection of Prospect and Erie streets to the intersection of Prospect and Ontario streets, and thence by northerly curves connecting with its lines on Ontario street; also to extend its tracks from the present tracks at the intersection of Superior and Seneca streets, thence along Seneca street to Lake street, thence along Lake street to Ontario street, and thence along Ontario street to the center of Monumental Park, connecting with the present tracks in Ontario street; with the necessary connecting tracks and also poles and overhead wires, and to construct and maintain said extensions and to operate the same by means of electricity as a motive power, upon the following terms and conditions:

SECTION 2. The laying of such tracks and the erection of such poles and the placing thereon of the necessary wires and appliances shall be under the supervision and control of the Director of Public Works, and such poles shall be of such size and shall be set at such places as shall be required by said Director. Should it become necessary in the prosecution of any work by the city that such poles be temporarily moved, such removal shall be made and such poles shall be reset by said company at its own cost. The running of cars on any part of the lines of street railroad of said company may be suspended by the Board of Control for such period as may at any time be necessary on account of repairs of streets or sewers, or the
389 making of any public improvement, and whenever it may be necessary to have any track taken up for any of the purposes aforesaid, the same shall be taken up and relaid at the expense of said company.

SECTION 3. The said company shall at all times use such precautions for the public safety as the Board of Control may from time to time require, and shall at all times defend, keep harmless and indemnify the City of Cleveland from and against all lawful claims and demands for any injury to persons or property, cost and expense to which the city may be subjected or made liable by any proceeding at law or in equity, or otherwise, growing out of this grant, or out of the exercise or enjoyment of the same by said company.

SECTION 4. Upon completion of the repaving of Prospect street between Erie and Ontario streets, heretofore ordered by the Council, said company shall pay into the city treasury to the credit of the fund for such repaving, a sum equal to the ascertained cost of paving a strip sixteen feet in width and extending from Erie street to Ontario street; and when any of the other streets over which such

extension is granted shall be repaved, the said company shall pay the cost of paving a strip sixteen feet in width for a double track and seven feet for a single track over the entire length of the same, including street intersections; and it shall keep in constant good order and repair sixteen feet in width along the center of the roadway, of each of said streets along the extension herein granted.

SECTION 5. The said company shall comply with and perform all the terms and conditions of the resolution adoped by the City Council on the 29th day of May, 1893, in reference to the consolidation of the East Cleveland Railroad Company, the Broadway & Newburgh Street Railroad Company, The Brooklyn Street Railroad Company and the South Side Street Railroad Company, under the name of the Cleveland Electric Railway Company.

390 Upon all of its lines of street railroads within the City of Cleveland, said company shall place and continue the most approved cars, equipped and furnished with such improvements, equipments, and appliances as the Council may deem proper for the safety, convenience, and comfort of passengers, shall run the said cars in such numbers, at such intervals of time, and under such rules and regulations as the Council may from time to time require, and shall cause the said cars to stop at all street intersections at which any person may desire to leave or enter the same. The Council shall have the right at any time to require said company to operate its cars over the entire length of any of the lines or branches of the said constituent companies, in the same manner and between the same terminals as cars were operated prior to the consolidation of said constituent companies, or any of them, under the name of The Cleveland Electric Railway Company. Whenever required by the Council, night cars shall be operated throughout the entire length of each of the lines of said company, at least hourly each way, between midnight and 6 a. m. daily. The said company shall also, whenever and as often as may be required by the Director of Public Works, sprinkle between the outer rails of its tracks, including the space commonly known as the devil strip, on all streets and street intersections wherein any tracks on any of the lines of said company are laid, in a manner satisfactory to said Director. In consideration of the grant made by this ordinance, said company agrees that all the terms and provisions of this section shall apply to and be a condition upon each and all the grants heretofore made by the Council to said constituent companies or either of them, under which the existing lines of street railroad now operated by the Cleveland Electric Railway Company have been constructed.

SECTION 6. This grant shall be in force until the 13th day of July, 1913, but the Council reserves and shall at all times have the right to authorize any other individual, company or corporation to jointly occupy and use, for street railway purposes, the whole or any part of the tracks and appliances, wires and poles herein

391 authorized to be constructed on said extension, upon such terms and conditions as the Council may deem just and reasonable, unless such individual, company or corporation shall otherwise agree with said, The Cleveland Electric Railway Company, as to the terms and conditions of such use and occupation.

SECTION 7. The said company within ten days after the passage of this ordinance shall pay to the city the cost of publishing the same, and shall file with the City Clerk an acceptance in writing of the rights and privileges herein granted, and therein agree to comply with and perform all the terms and conditions upon which the same are granted, and as soon after such acceptance as the Board of Control may direct, said company shall commence the work of constructing said extension, and shall complete the same within four months thereafter; otherwise this ordinance shall be null and void.

SECTION 8. The failure or refusal of said company at any time to comply with and perform all and singular the terms and conditions of this ordinance, or the general ordinances of the city relating to street railroads, now or hereafter in force, shall work a forfeiture of this grant, and the rights and privileges hereby granted shall become null and void, upon the adoption of a resolution by the Council to that effect. Nothing in this ordinance contained shall be held to release said company from any of the conditions of any of the grants heretofore made by the city to any of said constituent companies.

SECTION 9. This ordinance shall take effect and be in force from and after its passage and legal publication.

Passed July 17, 1893.

A. J. MICHAEL,
Pres. of the Council.

H. H. BURGESS,
City Clerk.

392 *Acceptance.*

CLEVELAND, OHIO, *July* 24, 1893.

Howard H. Burgess, Esq., City Clerk, City Hall, City.

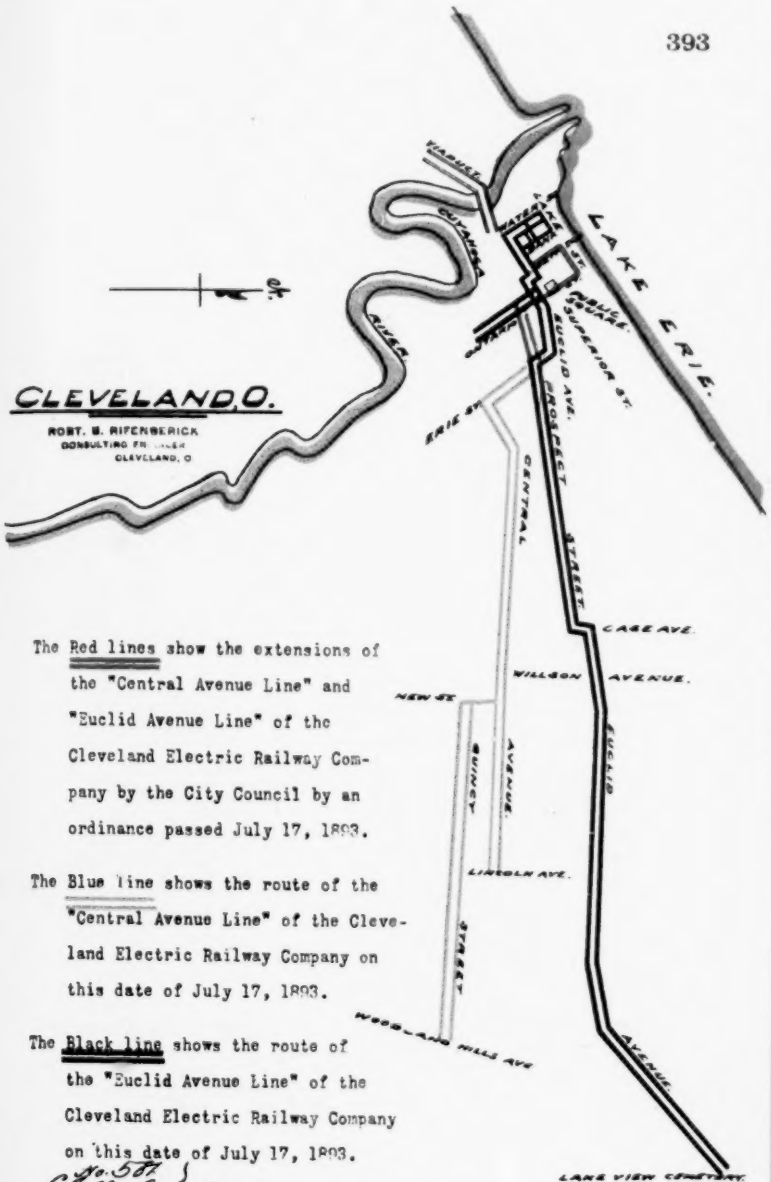
DEAR SIR: The undersigned hereby accepts Ordinance No. 3128, passed by the City Council, on July 17, 1893.

Yours truly,

THE CLEVELAND ELECTRIC RAILWAY COMPANY,
By HORACE E. ANDREWS, *V.-President.*

Received July 24, 1893.

(Here follows map marked p. 393.)



The Red lines show the extensions of the "Central Avenue Line" and "Euclid Avenue Line" of the Cleveland Electric Railway Company by the City Council by an ordinance passed July 17, 1893.

The Blue line shows the route of the "Central Avenue Line" of the Cleveland Electric Railway Company on this date of July 17, 1893.

The Black line shows the route of the "Euclid Avenue Line" of the Cleveland Electric Railway Company on this date of July 17, 1893.

No. 58 Ry Co
Cleveland Ohio
p 393

394 An Ordinance granting permission to the Cleveland Electric Railway Company and the Cleveland City Railway Company to extend their tracks in Willson avenue.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That permission is hereby granted to the Cleveland Electric Railway Company to extend its double track street railroad on and along Willson avenue from its present tracks at the intersection of Scovill and Willson avenues to its present tracks at the intersection of Perkins and Willson avenues, and from its present tracks at the intersection of Hough and Willson avenues to the northerly terminus of said Willson avenue with the necessary curves and connecting tracks, and that permission is hereby granted to the Cleveland City Railway Company to extend its double track street railroad on and along said Willson avenue from its present tracks at the intersection of Woodland and Willson avenues to its present tracks at the intersection of Lexington and Willson avenues, and from its present tracks at the intersection of Payne and Willson avenues to the northerly terminus of said Willson avenue, with the necessary curves and connecting tracks, such extensions to be constructed, maintained, and operated in connection with the existing tracks in said Willson avenue, as a double track street railroad, with the necessary poles and overhead wires, and to be operated by means of electricity as a motive power, upon the following terms and conditions:

SECTION 2. The said grantees shall jointly construct and maintain the tracks, wires, poles, and appliances herein authorized to be constructed on said extensions, and each of said companies shall have the right to occupy and use the tracks, wires, poles, and appliances of the other company now in said Willson avenue, north of the center of Woodland avenue, upon such terms and conditions as the Council may deem just and reasonable, unless they shall otherwise agree as to the same.

SECTION 3. The laying of such tracks and the erection
395 of such poles and the placing thereon of the necessary wires and appliances shall be under the supervision and control of the Director of Public Works, and such poles shall be of iron or steel, and they shall be of such size, shall be painted such color, and shall be set at such places as shall be required by said Director. Whenever, in the prosecution of any work by the city, or for any other reason, the Director of Public Works or the Board of Control shall deem it necessary or advisable, such tracks, poles, wires, or appliances shall be temporarily removed and replaced at the expense of said companies, and without liability on the part of the city for any damage resulting therefrom. The running of cars on any part of said extensions may be suspended by the Board of Control for such period as may at any time be necessary on account of the construction, removal, or repair of any pavement, sewer, water, or gas pipe, or other public improvements.

SECTION 4. The said companies shall at all times use such precautions for the public safety as the Council or the Board of Control may from time to time require, and shall at all times defend, keep

harmless, and indemnify the City of Cleveland from and against all lawful claims and demands for any injury to person or property, costs or expense to which the city may be subjected or made liable by any proceedings at law or in equity, or otherwise, growing out of this grant, or out of the exercise or enjoyment of the same by said companies, or either of them.

SECTION 5. The Cleveland Electric Railway Company shall run through cars on said Willson avenue between Broadway and the northerly terminus of said avenue, in such numbers, at such intervals of time, and under such rules and regulations as the Council may from time to time require, and shall cause the said cars to stop at all street intersections at which any person may desire to leave or enter the same, and at such other places as the Council shall from time to time require. Night cars shall be operated by said company throughout the entire length of said Willson avenue at least
396 hourly each way, between midnight and 6 o'clock a. m. daily. The operation by the Cleveland City Railway Company of said line of street railroad on Willson avenue north of Woodland avenue shall be under the control and regulation of the Council. Only the most improved motors and cars now or hereafter in use by either of said companies shall be used on said Willson avenue, and the same shall be equipped and furnished with such improvements, equipments, and appliances as the Council may deem proper for the safety, convenience, and comfort of passengers, and the public. In laying said track, girder rail of at least ninety-three pounds shall be used. All cars shall be properly lighted at all times between sunset and sunrise, shall be so heated as to maintain a reasonably comfortable temperature therein at all times, and shall be supplied with such guards as shall securely close the tracks thereof. The said companies shall, whenever and as often as may be required by the Director of Public Works, sprinkle between the outer rails of their tracks on said Willson avenue, including the space commonly known as the devil strip, in a manner satisfactory to said Director.

SECTION 6. A passenger on any car operated on any part of said Willson avenue, on payment of one fare, either in cash or by ticket, shall be entitled, without additional or extra charge, to be transferred to any other line of either of said companies, intersecting or coming to said Willson avenue, including the lines on Broadway, and to have a continuous ride thereon, with the right, without additional or extra charge, to be transferred from such second line to a car on any other line of the company operating the same which crosses the Cuyahoga river, and passengers on any line of either of said companies intersecting or coming to said Willson avenue, including the line on Broadway, shall be entitled, without additional or extra charge, to be transferred to said Willson avenue line and to have a continuous ride thereon. The Council shall at all times have the right
397 to prescribe rules and regulations in respect to the transferring of passengers as provided for in this section.

SECTION 7. Said company shall, at the time of constructing such extensions, pave their tracks and the space between their tracks in said extensions with such pavement as may be required by the Council or the Board of Control, in that portion of said Willson

avenue north of St. Clair street, the same to be done under the direction and to the acceptance of the Director of Public Works, and whenever such portion of said avenue shall be paved by the City, said companies shall pay for the paving of a space one foot in width on the outside of each outer rail, with the same material as the balance of the street shall be paved with, in addition to the paving above mentioned. Said companies shall also, at the time of constructing such extensions, take up all pavement that is deemed necessary by the Director of Public Works, in that portion of said Willson avenue which is now paved, and replace the same in as good condition as the same is now in, to the acceptance of the Director of Public Works, and shall, within sixty (60) days after the acceptance of this ordinance, pay to the property owners on such paved portion of said Willson avenue their pro rata share of the amounts heretofore paid by them or their predecessors in title for such pavement as is embraced in a strip sixteen (16) feet in width extending the entire length of same, and shall pay to the city the cost of a strip of pavement sixteen (16) feet in width of all street intersections. The said company shall keep in constant good repair and order, to the acceptance of the Director of Public Works, on that portion of Willson avenue north of the center of Scovill avenue, the pavement embraced within the tracks of said companies, the space between said tracks, and a strip one foot in width on the outside of each outer rail, in all a strip of pavement sixteen (16) feet wide, and whenever the Council shall deem it necessary to repave any portion of said Willson avenue north of the center of Scovill avenue, said
398 companies shall pay the cost of paving a strip sixteen (16) feet in width along such portion of Willson avenue with such pavement as the Council shall deem proper.

SECTION 8. Said companies shall, at the time of constructing said extensions, at their own expense, widen the roadway of said Willson avenue, between Euclid and Scovill avenues, by a space of five (5) feet on each side thereof, set back the curbs, all hydrants, and catch basins now in said spaces, and leave the lawns on either side in good order, and pave said spaces of five (5) feet on each side of said roadday with the same material as that used in the pavement of the present roadway in that portion of said Willson avenue, all to be done in a proper manner, under the supervision and to the acceptance of the Director of Public Works; and the Council does hereby declare that it is necessary that the roadway of said Wlson avenue, between Euclid and Scovill avenues, be widened by the space of five (5) feet on each side thereof in case said extension be constructed, and does ordain that said portion of said Willson avenue be so widened at the time said extensions are constructed, and that the same be done by said companies as aforesaid, at their own expense.

SECTION 9. The said companies shall comply with and perform all of the general ordinances of the City relating to street railroads now or hereafter in force.

SECTION 10. This grant shall be in force until the first day of July, 1914.

SECTION 11. Within ten (10) days after the passage of this ordinance the said companies shall pay to the city the cost of publishing

the same, and shall file with the City Clerk an acceptance, in writing, by both of said companies of the rights and privileges herein granted and therein agree to comply with and perform all the terms and conditions upon which the same are granted, and as soon after such acceptance as the Board of Control may direct, said companies shall commence the work of constructing said extensions, and shall complete the same within six (6) months thereafter; otherwise this ordinance shall be null and void.

399 SECTION 12. The failure or refusal of either of said companies at any time to comply with and perform all and singular the terms and conditions of this ordinance applicable to such company, or the general ordinances of the city relating to street railroads now or hereafter in force, shall work a forfeiture of this grant as to such company so in default, and the rights and privileges hereby granted to the same shall become null and void, upon the passage of an ordinance by the Council to that effect.

SECTION 13. This ordinance shall take effect and be in force from and after its passage and legal publication.

Passed Feb. 19, 1894.

A. J. MICHAEL,
Pres. of the Council.

H. H. BURGESS,
City Clerk.

400 *Acceptance.*

CLEVELAND, *February* 26, 1894.

To the Honorable City Council.

GENTLEMEN: The Cleveland City Railway Company accepts Ordinance No. 3196-A for the joint construction of street railway tracks in Willson avenue.

Very truly yours,

THE CLEVELAND CITY RAILWAY COMPANY,
By J. B. HANNA, *Secretary and Treas.*

CLEVELAND, OHIO, *February* 22, 1894.

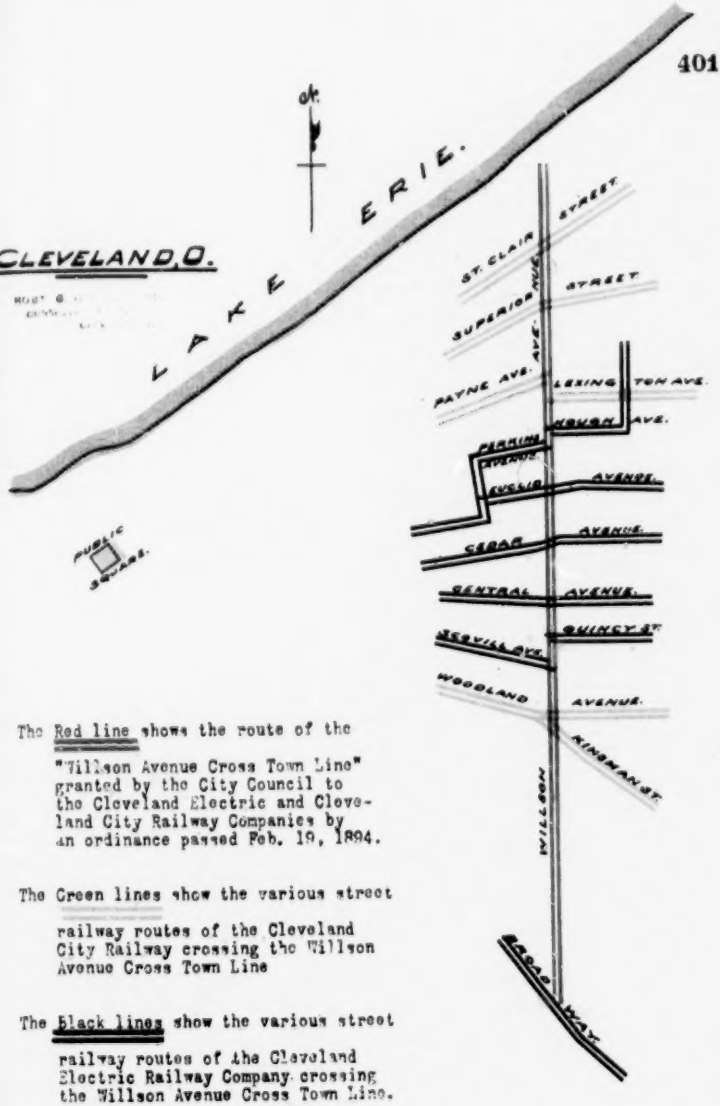
To the City Council of the City of Cleveland.

GENTLEMEN: The Cleveland Electric Railway Company hereby accepts Ordinance No. 3196-A, and agrees to comply with and perform all the terms and conditions thereof.

Very respectfully,

THE CLEVELAND ELECTRIC RAILWAY COMPANY,
By HORACE E. ANDREWS, *President.*

(Here follows map marked page 401.)



The Red line shows the route of the "Willson Avenue Cross Town Line" granted by the City Council to the Cleveland Electric and Cleveland City Railway Companies by an ordinance passed Feb. 19, 1894.

The Green lines show the various street railway routes of the Cleveland City Railway crossing the Willson Avenue Cross Town Line

The Black lines show the various street railway routes of the Cleveland Electric Railway Company crossing the Willson Avenue Cross Town Line.

No. 381.
C. E. Ry. Co.
v.
Cleveland
et al.
} p. 401

402 No. 3601.

An Ordinance granting the Cleveland Electric Railway the right to extend and operate its double track street railroad in Quincy street from New street to Willson avenue.

SECTION 1. Be it ordained by the Council of the City of Cleveland, that the Cleveland Electric Railway Company is hereby granted permission to extend, maintain and operate, by means of electricity as a motive power, its double track street railroad on and along Quincy street from its present tracks therein, westerly to Willson avenue, connecting by curves with its Willson avenue tracks.

SECTION 2. The laying by said company of its tracks in said extension, the erection of the necessary poles and the placing thereon of the necessary wires and appliances shall be under the supervision and control of the Director of Public Works, and said poles shall be of such size and shall be set at such places as shall be required by said Director. Should it become necessary in the prosecution of any work by the city that such poles be temporarily moved, such removal shall be made and such poles be reset by said company at its own cost. The running of cars on any part of the lines of street railroad of said company may be suspended by the Board of Control for such period as may, at any time, be necessary on account of repairs of streets or sewers, or the making of any public improvement, and whenever it may be necessary to have any track taken up for any of the purposes aforesaid, the same shall be taken up and relaid at the expense of said company.

SECTION 3. The said company shall at all times use such precautions for the public safety as the Board of Control may from time to time require, and shall at all times defend, keep harmless and indemnify the city of Cleveland from and against all lawful claims and demands for any injury to persons or property, costs and expenses to which the city may be subjected or made liable by any pro-
403 ceedings at law or in equity, or otherwise, growing out of this grant, or out of the exercise or enjoyment of the same by said company.

SECTION 4. Said company shall, at the time of constructing said extension, pave its tracks and the space between its tracks, including the space commonly known as the devil strip, in said extension, with such pavement as may be required by the Board of Control, the same to be done under the directions and to the acceptance of the Director of Public Works; and whenever said portion of said Quincy street shall be paved by the city, said company shall pay for the paving of a space one foot in width on the outside of each outer rail with the same material as the rest of the street shall be paved with, in addition to the paving mentioned; and shall also, if the Board of Control deem it necessary, repair said tracks and space between the same with such material and in such manner as the Board of Control may order; and whenever said Quincy street shall be repaved, the said company shall pay the cost of paving a strip sixteen feet in width over the entire length of said extension, including street intersections;

and said company shall keep in constant good order and repair sixteen feet in width along the center of the roadway of said Quincy street between the points aforesaid.

SECTION 5. No additional fare shall be charged to any passenger by reason of this extension.

SECTION 6. This grant shall terminate with the grant for said company's present line in Quincy street. In consideration of the grant herein made, said company shall surrender all rights and privileges heretofore granted for the construction and operation of a street railroad in New street and the Council hereby consents to the abandonment by said company of its present track in New street, provided said company shall remove its said tracks and place
404 the street in good condition, to the satisfaction of the Director of Public Works and the Board of Control.

SECTION 7. The failure or refusal of said company at any time to comply with and perform all and singular the terms and conditions of this ordinance, or the general ordinances of the city, relating to street railroads, shall work a forfeiture of this grant, and the rights and privileges hereby granted shall become null and void upon the passage of an ordinance by the Council to that effect.

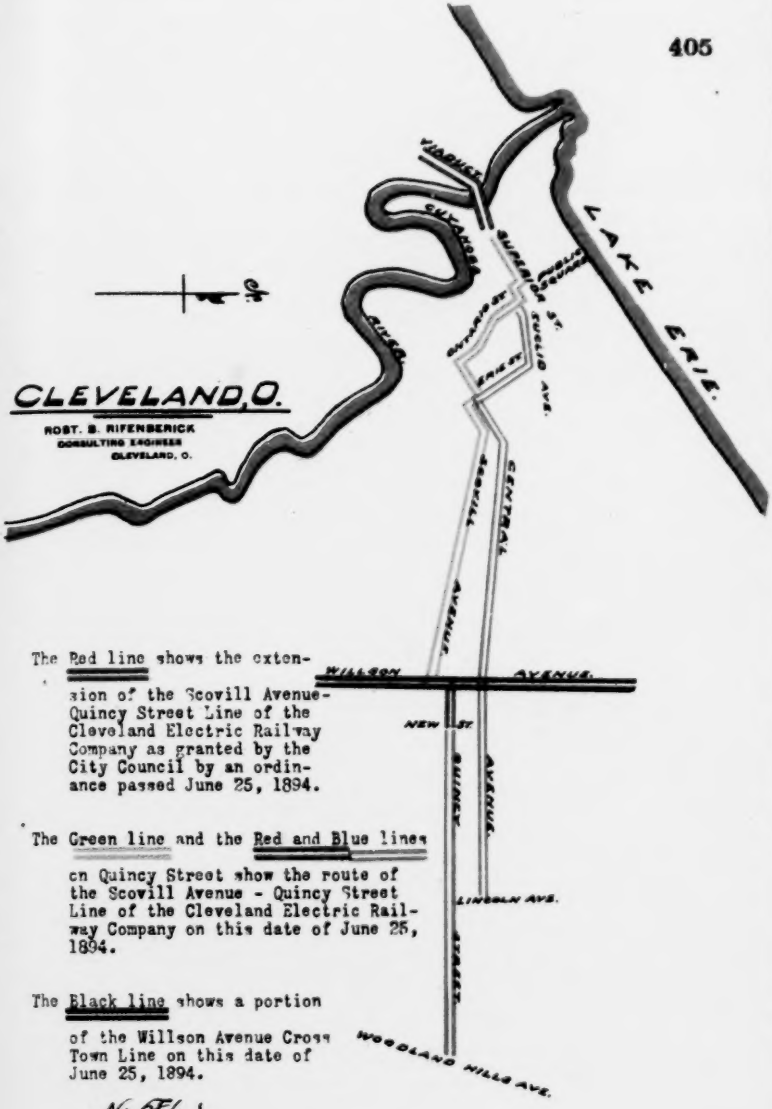
SECTION 8. This ordinance shall take effect and be in force from and after its passage and legal publication, the payment to the City Clerk by said company of the cost of such publication, and the filing by said company with the City Clerk of an acceptance, in writing, of the terms and conditions hereof.

Passed June 25th, 1894.

DAN F. REYNOLDS, JR.,
V. Pres. of the Council.

H. H. BURGESS,
City Clerk.

(Here follows diagram marked page 405.)



The Red line shows the extension of the Scovill Avenue-Quincy Street Line of the Cleveland Electric Railway Company as granted by the City Council by an ordinance passed June 25, 1894.

The Green line and the Red and Blue lines on Quincy Street show the route of the Scovill Avenue - Quincy Street Line of the Cleveland Electric Railway Company on this date of June 25, 1894.

The Black line shows a portion of the Willson Avenue Cross Town Line on this date of June 25, 1894.

No. 58.
Cl. Ry Co.
Cleveland
Ohio
p. 405

406 *Ordinance No.* 33573 A.

An ordinance to grant the Cleveland Electric Railway Company the right to extend and operate a single track street railroad from Euclid avenue along the easterly side of the Public Square to Superior street and the right to use the tracks of the Cleveland City Railway from the westerly side of the Public Square to Erie street.

SECTION 1. Be it ordained by the Council of the City of Cleveland, That the Cleveland Electric Railway Company be and it is hereby granted permission to construct the following extension of its existing double track street railroad, to wit:

Beginning at the intersection of Euclid avenue with the easterly side of the Public Square, thence northerly by single track along the easterly side of the Public Square to Superior street and to connect with the existing tracks in Superior street at that point, together with the necessary curves and connecting tracks, poles, and wires, and the said The Cleveland Electric Railway Company is hereby authorized to use the tracks of the Cleveland City Railway Company now existing in Superior street in the Public Square and in Superior street from the Public Square to the intersection of Superior street with Erie street, and to connect the tracks of the said The Cleveland Electric Railway Company on Erie street with the existing tracks on Superior street at the intersection of Superior street and Erie street, together with the necessary curves, connecting tracks, poles and wires, and to operate its street railway over such extension by means of electricity or other motive power that may be approved by the Council.

SECTION 2. Said company shall use such rail and shall construct the said tracks and appliances in such manner as the Board of Control may direct, under the supervision of the City Engineer and to his satisfaction.

SECTION 3. This grant is made subject to all ordinances of the City of Cleveland, now in force, or which may hereafter be in force, providing for the construction, operation and government of street railways, the said company, however, to pay for seventeen (17) feet of paving if it be allowed to lay its tracks five feet apart, except that the said street railway company shall be relieved from the
407 provisions of Sec. 871 of the Revised Ordinances, relating to paying the estimated value of certain paving.

SECTION 4. This grant shall expire March 22, 1905, unless it be sooner terminated by the City, and the City reserves to itself the right to terminate it at any time, and shall at all times reserve the right to itself, and also the right to authorize any other individual, company or corporation to jointly occupy and use, for street railway purposes, the whole or any part of the tracks and appliances, wires and poles herein authorized to be constructed on said extension, upon such terms and conditions as the city may deem just and reasonable, unless such individual, company or corporation shall otherwise agree

with the said The Cleveland Electric Railway Company as to the terms and conditions of such use and operation.

SECTION 5. Said company shall within ten days after the passage of this ordinance pay to the City the cost of publishing the same, and file with the City Clerk an acceptance in writing of the rights and privileges herein granted and therein agree to comply with and perform all the terms and conditions upon which the same are granted, and, as soon after such acceptance as the Board of Control may direct, said company shall commence the work of constructing said extension, and shall complete the same within four months thereafter; otherwise this ordinance shall be null and void.

SECTION 6. This ordinance shall take effect and be in force from and after its passage and legal publication.

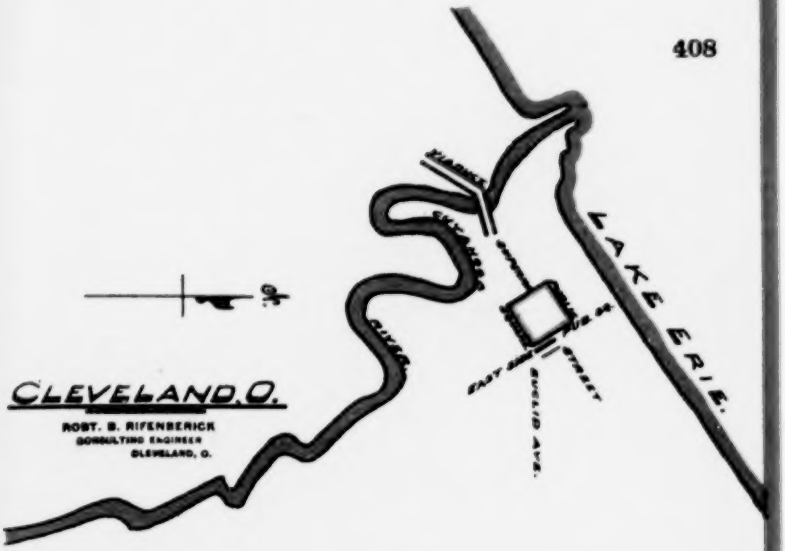
Passed Aug. 5, 1901.

G. C. ASHMUN,
Pres. of the Council.

CHAS. W. TOLAND,
City Clerk.

Approved by the Mayor Aug. 8, 1901.

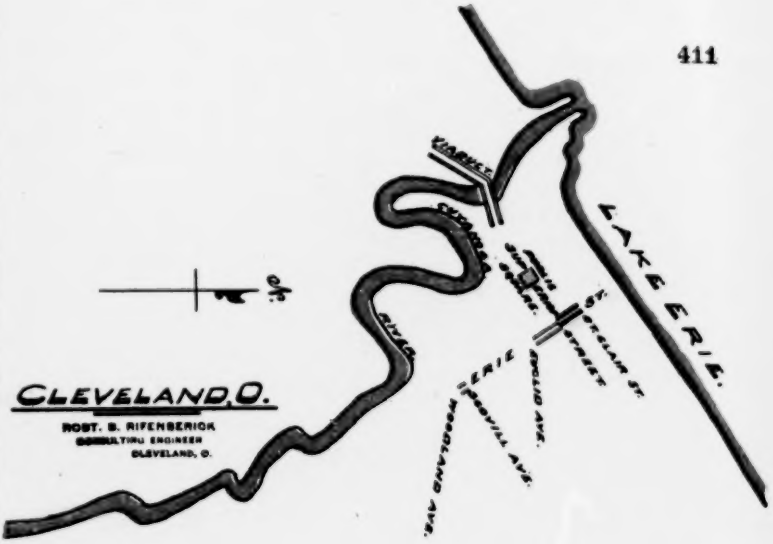
(Here follows diagram marked page 408.)



The Red line shows the grant, by the City Council, to the Cleveland Electric Railway Company by an ordinance passed August 5, 1901, for a single track along the east side of the Public Square from Euclid Avenue to Superior Street, which grant expired March 22, 1905.

The Black line shows the grant, by the City Council, to the Woodland Avenue and West Side Street Railway Company by an ordinance passed July 9, 1888, and is still in effect.

No. 551.
C.E.Ry.Co.
&
Cleveland
et al.
} p 408



The Red lines show the grant, by the City Council, to the Cleveland Electric Railway Company, by an ordinance, passed June 23, 1902, for double track extensions in Erie Street, which grant expired March 22, 1905.

The Black lines show that part of the above grant over which the Cleveland City Railway Company was at the time and is operating under an ordinance of the City Council passed July 3, 1893, and which is still in effect.

No. 581.
C.E.Ry.Co.
Cleveland
Vol. } p. 411

409 No. 38167.

An ordinance to grant to the Cleveland Electric Railway Company the right to extend and operate its double track street railroad on Erie street, from Euclid avenue to St. Clair street, and from Scovill avenue to Woodland avenue.

SECTION 1. Be it ordained by the Council of the City of Cleveland, That the Cleveland Electric Railway Company, its successors and assigns are hereby authorized to extend and operate said company's double track street railroad in and along Erie street, from Euclid avenue to St. Clair street and from Scovill avenue to Woodland avenue, together with all tracks and curves necessary to connect said extensions with the present tracks of said company in Euclid avenue and Scovill avenue, and with the tracks of The Cleveland City Railway Company in Woodland avenue and Superior street, and all necessary poles and wires, and to operate cars over such extensions by means of electricity, or other motive power that may be approved by the Council; provided that they must use the existing tracks of the Cleveland City Railway Company, between Superior street and St. Clair street, upon terms to be fixed by the Council, if said companies are unable to agree upon terms.

SECTION 2. Said company shall construct the said tracks and appliances in such manner as the Board of Control may direct, under the supervision of the City Engineer, and to his satisfaction.

SECTION 3. This grant is made subject to all ordinances of the City of Cleveland, now in force or which may hereafter be in force, providing for the construction, operation and government of street railroads, except that said company shall be relieved from the provisions of Section 871 of the Revised Ordinances, relating to paying the estimated value of certain paving.

SECTION 4. This grant shall expire March 22, 1905, and the City reserves the right to itself, and also the right to authorize any other individual, company or corporation to jointly occupy and
410 use the whole or any part of the tracks and appliances, poles, wires and current herein authorized to be constructed upon said extensions upon such terms and conditions as the city may deem just and reasonable, unless such individual, company or corporation shall otherwise agree with the said The Cleveland Electric Railway Company as to the terms and conditions of such use and occupation.

SECTION 5. Said company shall, within ten days after the passage of this ordinance, pay to the City the cost of publishing the same, and file with the City Clerk an acceptance in writing of the rights and privileges herein granted, and this grant shall become void if said company shall fail to exercise the privileges herein granted within six months from the passage of this ordinance.

SECTION 6. This ordinance shall take effect and be in force from and after its passage and legal publication, and the acceptance of the terms thereof by said company.

Passed June 23, 1902.

T. H. DILLON,
Pres. of the Council.

CHAS. W. TOLAND, *City Clerk.*

Approved by the Mayor June 26, 1902.

(Here follows map marked page 411.)

412 No. 44240.

An ordinance granting to the Forest City Railway Company, its successors and assigns, the renewal right to maintain and operate the existing street railroads in the following streets:

Commencing at the intersection of Prospect and Erie streets, in the City of Cleveland, State of Ohio; Thence southerly on, over and along Erie street to Central avenue; thence easterly on, over and along Central avenue to Lincoln avenue, also commencing at the intersection of Quincy street with Willson avenue, in said city; thence easterly on, over and along Quincy street to Woodland Hills avenue.

Whereas, certain rights and franchises of The Cleveland Electric Railway Company, its successors and assigns, to construct, maintain and operate an electric street railroad on, over and along the streets, avenues and parts thereof hereinafter described, expires by limitation at midnight on the 22nd day of March, 1905; and

Whereas, the City Council of the City of Cleveland, State of Ohio, has the right to renew such rights and franchises at their expiration, to such person or corporation, and upon such terms and conditions as may be considered conducive to the public interest; and

Whereas, The Forest City Railroad Company has presented and made in writing to the City Council of the City of Cleveland, State of Ohio, an offer to maintain and operate a street railroad on, over and along the streets, avenues and parts thereof hereinafter described, upon terms which are deemed by the Council of the City of Cleveland, State of Ohio, to be conducive to the public interest, and which offer the Council of the City of Cleveland, State of Ohio, deems to be the best that can be obtained for a renewal of such grant to carry passengers upon a street railroad, on, over and along said streets, avenues and parts thereof hereinafter described; and

413 Whereas, On the 28th day of December, 1903, the Council of the City of Cleveland passed the following resolution numbered 44257, which was as follows:

Whereas, An application has been presented to this Council for renewal of certain street railroad grants and privileges by the Forest City Railroad Company and Ordinance No. 44240 introduced in this Council granting to said The Forest City Railway Company the privilege asked for in their said application; and

Whereas, Said Ordinance No. 44240 has been referred to the Committee on Street Railroads, Board of Public Service, City Solicitor and Mayor; and

Whereas, The Chairman of said Street Railroad Committee has fixed Thursday, the 31st day of December, 1903, at three o'clock p. m. in room 108 City Hall, as the time and place of the first meeting to consider said application and ordinance; now therefore,

Resolved, That the City Clerk be and he is hereby directed to transmit to the Cleveland Electric Railway Company a copy of said application and said ordinance and a copy of this resolution, together with an invitation to said The Cleveland Electric Railway Company to be present at said meeting, or any adjournments thereof,

to participate in the deliberations of said Committee and to offer any suggestions or propositions that they see fit to make, either to said company or to the Council.

Pursuant to the passage of which said resolution Peter Witt, City Clerk, did notify the Cleveland Electric Railway Company of the passage and contents of said resolution, and did receive in reply from the Cleveland Electric Railway Company the following letter:

CLEVELAND, *December* 30, 1903.

Peter Witt, City Clerk, City Hall, Cleveland.

DEAR SIR: We have received your communication of the
414 29th inst., addressed to the Cleveland Electric Railway Company, in which you enclose copies of resolutions Nos. 44258 and 44257 adopted by the Council December 28th, 1903, and, as directed by the Council, extending an invitation to this Company to be present at a meeting of the committee to which said resolutions have been referred, to participate in its deliberations.

We beg to advise the committee and the City Council that the proposed ordinances to be considered by the committee which purport to be ordinances to grant to the Forest City Railway Company the right to operate cars over portions of Woodland avenue and Central avenue, in which streets this company is now operating, are ordinances which impair the existing contract rights of the Company. We are advised that it is not true, in law or in fact, as recited in said ordinances, that the franchises now owned by this Company, under which it is operating, expire at the dates recited in said ordinance, but, on the contrary, neither of the franchises under which this Company operates in Woodland avenue and Central avenue expires for some years to come. The franchises under which this Company is operating in said streets are contracts between it and the City of Cleveland which cannot lawfully be impaired by subsequent ordinances of the city, and upon the faith of these contracts this Company has invested large sums of money. This Company will not in any way recognize the right of the Council to impair its contract rights in the premises.

There are various other reasons why this proposed legislation could not legally be passed by the Council, but we deem it sufficient at this time to call your attention to the fact that you cannot impair our contract rights in the method suggested by these proposed ordinances.

Respectfully submitted,

THE CLEVELAND ELECTRIC RAILWAY CO.,
By HORACE E. ANDREWS, *President.*

415 To which said letter Charles A. Kohl, Chairman of the Committee on Street Railways, did, on the 1st day of January, 1904, reply by letter to the said The Cleveland Electric Railway Company, as follows:

JANUARY 1, 1904.

The Cleveland Electric Railway Company, Cleveland, Ohio.

GENTLEMEN: In your letter to the City Clerk, answering the invitations in resolutions Nos. 44257 and 44258 adopted by the City

Council of the City of Cleveland, State of Ohio, December 28, 1903, you say:

"We are advised that it is not true in law or in fact as recited in said ordinances, that the franchises now owned by the Company, under which it is operated, expire at the dates recited in said ordinances, but, on the contrary, neither of the franchises under which this Company operates in Woodland avenue and Central avenue expire for some years to come."

The Committee having ordinances Nos. 44239 and 44240 under consideration—composed of the persons indicated in the resolutions before referred to—is anxious to avoid recommending any ordinance that will impair any contract obligations existing between your company and the City of Cleveland. The Committee has taken recess until Monday, the 4th inst., at 4:00 p. m., when they will again meet at Room 108 City Hall for further deliberation on this subject.

The Committee is advised that the grants which ordinance No. 44239 proposes to renew, expire on the 20th day of September, 1904; and that the grants which ordinance No. 44240 proposes to renew expire on the 22nd day of March, 1905. Since your claim that the said grants expire at later dates, the Committee hereby request specific information from you as to the title, date, and particular sections or parts of sections of ordinances or grants upon which you base your claims, and would like very much to have your answer in time to be considered at the committee meeting on Monday after-
416 noon.

The Committee also desires you to have your representatives present at the said meeting to present any views or suggestions that you may have to make upon the subject of the Ordinances under consideration.

Very truly yours,

CHARLES A. KOHL,
Chairman Committee on St. Railways.

And at a meeting of the committee to which this ordinance was referred, held on the 4th day of January, 1904, Henry Davies, Esquire, Secretary of the Cleveland Electric Railway Company, was present and stated that Mr. Andrews, President of the said Railway Company, was out of the City and that in his absence no one was authorized to speak for him, but no other answer was made by said The Cleveland Electric Railway Company to the letter of the said Charles A. Kohl, and

Whereas, all necessary requirements with reference to a renewal of said grant aforesaid have been duly complied with:

Now, therefore, be it further ordained by the Council of the City of Cleveland State of Ohio, that,

SECTION 1. The Council of the City of Cleveland, State of Ohio, hereby renews and grants to The Forest City Railway Company, its successors and assigns hereinafter called the grantee, the right to maintain and operate a double track street railroad, with the necessary switches, turn-outs, turn-tables, poles, trolley, feed and span wires,

appliances, equipment, etc., and to maintain and operate the same on, over and along the following streets, avenues and parts thereof, commencing at the intersection of Prospect street and Erie street, in the City of Cleveland, State of Ohio; thence easterly on, over and along Erie street to Central avenue; thence easterly on,
417 over and along Central avenue to Lincoln avenue; and also commencing at the intersection of Quincy street with Willson avenue, in said City; thence easterly on, over and along Quincy street to Woodland Hills avenue.

The rights herein granted in Erie street are subject to the reversed right of the City of Cleveland to make further grants in said Erie street with reference to the joint use of the tracks, poles, wires and other appliances and electric currents therein, upon such terms as the City of Cleveland may deem just and equitable.

SECTION 2. The motive power to be used by the said grantee in the maintenance and operation of said railroad shall be electricity. The railroad and its equipment shall be maintained and kept modern and first-class, and to the satisfaction of the Board of Public Works.

SECTION 3. The right is hereby granted to said grantee to erect the necessary poles and wires and connect the necessary power houses with said street railroad wherever necessary.

SECTION 4. The rate of fare shall be three cents for each passenger carried, and said fare shall entitle the passenger to one continuous ride in the same general direction, and each passenger shall be entitled to one transfer ticket for passage on another line at all points of intersection or connection with other routes operated by the grantee, if such transfer be necessary to enable him to continue to his destination. The City reserves the right to regulate the issuance and use of transfers to carry out this provision, and also reserves the right from time to time to establish transfer points, and require the exchange of free transfers at such points between the lines of the grantee hereof and other street railroad companies. Any child under six years of age, accompanied by a person paying fare, shall be carried free.

SECTION 5. The City reserves the right to purchase and
418 street railroad tracks, poles, wires, appliances, or equipment owned or used by the grantee on such route herein described, whenever it may have the power to do so, for such price and upon such terms and conditions as may be agreed upon between it and the owner thereof, or upon their failure so to agree, then for such price and upon such terms as may be fixed by a Board of Arbitration, consisting of three persons, a majority of whom shall decide all questions.

SECTION 6. In case of arbitration in the purchase of said street railroad, the City shall give at least six months' written notice of its intention so to arbitrate, and shall name therein one arbitrator. The owner shall name in writing, within thirty days thereafter, one arbitrator. The two, within thirty days thereafter, shall agree upon the third arbitrator. On the failure on the part of the owner to name one arbitrator, or on the failure of the two arbitrators to name

the third, the probate judge of Cuyahoga County may name either or both, as the case may be, upon the application of the City. In case of death or disability of any one of the arbitrators, his place shall be filled in the manner provided for the making of his appointment.

SECTION 7. The value of said street railroad shall be obtained as follows: The cost of reproduction shall be estimated, and from this shall be taken a reasonable amount for depreciation. All the physical property of every nature used in the operation of the railroad shall be included in the valuation. Separate itemized schedules, with values, shall be made under the following titles:

1. Land.
2. Power Houses, including buildings and machinery.
3. All buildings except power houses.
4. Tracks.
5. Street pavement to the extent paid for by the grantee.
6. Rolling stock.
7. Miscellaneous.

419 To this total valuation of the above items shall be added twenty (20) per cent, but in arriving at the said valuation the franchises and privileges granted by the City shall not be estimated or paid for.

SECTION 8. The City reserves the right to decline to take the property at the valuation fixed by arbitration as above provided, but in case of such declination no demand to purchase shall be made by the City within a period of two years thereafter.

SECTION 9. The City reserves the right to grant to any other party or parties the joint use of not to exceed ten per cent of the length of the route herein described, on such terms as may be fixed by the Council, in case the parties do not agree; but no such grant shall be made to any party who shall charge a higher rate of fare than the grantee.

SECTION 10. If at the expiration of this franchise no extension or renewal thereof be granted by the City to the then owner, and the City has not itself acquired the property, then any party to whom a franchise may be granted over the within route and any extension thereof, shall have the right, and be under obligation to purchase said railroad under the terms providing for the purchase by the City as herein contained.

SECTION 11. The grantee herein shall make known the true state and condition of the financial affairs of said railroad, and the City Auditor and his authorized agents shall have the right and be afforded the privilege at any and all reasonable times to examine any and all books of account, lists of names of stockholders, showing their respective holdings in said company, and shall be permitted to ascertain from said records and books the actual amount of capital stock issued, the cost of the property, liabilities, assets, profits and losses, income, expenses and cost of betterments.

SECTION 12. The maintenance and operation of the street
420 railroad and the enjoyment of the privileges hereby granted, shall be subject to and governed by the general street railroad

ordin[illegible]es now in force, except as the same are herein or hereafter modif[illegible], and shall be subject to the future ordinances and regulations [illegible] the Council.

SECTION 13. In case the said grantee fails to begin the operation of the street railway herein mentioned and described on the 23d day of March, 1905, the Council of the City of Cleveland, State of Ohio, shall thereupon have the right to forfeit the grant herein made, excluding, however, any delays caused by *bona-fide* legal proceedings and other unavoidable delays over which the said grantee has no control, shall not be deemed by the Council ground for forfeiture of this grant.

SECTION 14. The rights herein granted to the grantee are upon the express condition following: The grantee shall pay to the owner of the tracks, poles, wires and appliances erected in the highways along the route herein described, and constructing a part of the street railroad covered by this grant, the value thereof, to be agreed upon between the grantee and the owner thereof not later than December 22nd, 1904, together with twenty (20) per cent added to such valuation, provided that such valuation can, at or before December 22nd, 1904, be agreed upon between the said grantee and the said owner, such payment to be made by the grantee on the 22nd of March, 1905; but if the grantee is unable on or before the 22nd day of December, 1904, to agree with the owner upon such valuation, then the grantee shall pay to the owner such sum as shall finally be adjudicated, by a court of competent jurisdiction to be the value thereof, the same to be payable at the time such valuation is so adjudicated, and payment in either case to be made by the grantee in cash.

SECTION 15. Whenever in the above ordinance the name of the Forest City Railway Company occurs, or wherever the said 421 The Forest City Railway Company is described herein as the grantee, it shall be held and understood to mean and include the said Forest City Railway Company, its successors and assigns, as fully as if the same were written out at length in each instance.

SECTION 16. The rights hereby granted shall expire on the 22nd day of March, 1925.

SECTION 17. This ordinance shall take effect and be in force from and after its passage and legal publication, and the acceptance in writing of the terms hereof by the said The Forest City Railway Company, its successors or assigns, within ten days after the passage hereof.

Passed Jan. 11, 1904.

C. W. LAPP,
President of the Council.

PETER WITT,
City Clerk.

Approved by the Mayor Jan. 20, 1904.
Jan. 21-28.

422 An ordinance prescribing the terms and conditions of street passenger railways within the city of Cleveland.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That any company organized for the purpose of laying down rails for running street passenger cars, to be drawn by horses or mules, through the streets of Cleveland, shall be guided, governed and regulated by the following conditions, and such restrictions as the Council may hereafter pass.

SECTION 2. No company shall be permitted to lay down any track in any of the streets of said City, without first having obtained the consent of the City Council by resolution, designating the Company to whom the privilege is granted, and the streets and parts of streets through which said track shall run; Provided, that before any such resolution shall pass, or permission be granted, the company shall make application in writing, designating the commencement and termination of their proposed track, and the streets through which they propose to run; after having previously given ten days' notice of such application, by publication in two daily papers in the city, and such application shall also be accompanied with the written consent of the holders of two-thirds of the property fronting on such streets.

SECTION 3. No more than one passenger railway, with necessary turn-outs and switches, shall be laid in any street, nor shall any track be laid within twelve feet of the sidewalk upon any street where it is practicable to be avoided. All tracks laid shall be of the gauge of four feet eight and one-half inches, and of the most approved rail, and in such manner as to be no impediment to the free and ordinary use of the streets and the passage of wagons, carriages, and other vehicles, on or across such track at any point and in any and all direc-
423 tions, with suitable bridges at all gutters, so as to permit the flow of water under the same, and on such grades as are now, or may be hereafter established by the City Council, and subject at all times to be taken up and relaid whenever deemed necessary by the City Council, for the purpose of regrading any street, constructing sewers, or laying water pipes therein. Any company to whom any privilege shall be granted by the City, may be required to pave with stone ten feet in width along their track or any portion thereof, whenever the City Council shall deem it necessary to preserve an even and hard surface on the street.

SECTION 4. And upon the further condition that any company to whom any privilege may be granted, shall place and continue upon said railway, good cars, with all the modern improvements for the convenience and comfort of passengers, and that they run cars thereon as the public convenience may require, under such direction as the City Council may from time to time prescribe.

SECTION 5. And provided also, that any company to whom such privilege may be granted, shall in all respects comply with the directions of the City Council in building said railways.

SECTION 6. And provided any such company shall not charge more than five cents for each passenger on any of said railways.

SECTION 7. And provided such company take out a license from

the Mayor, for each and every car used upon said railways, and annually pay such license fee as may from time to time be fixed by the City Council, but said annual license shall not exceed seventy-five dollars for each car. And provided also whenever at any future State or Federal census the population of the City of Cleveland shall be eighty thousand inhabitants, then and in that event the company shall be required to pay into the city treasury, for the use of the road fund, one cent on each passenger, in addition to the license
424 herein provided, under such regulations as the Council may prescribe.

SECTION 8. And provided further, that they shall file with the City Clerk a statement, under oath, of the cost of each mile or fraction of a mile of railway completed, and also a monthly statement of the gross receipts, and shall exhibit the books and vouchers belonging to the said company, to a committee of the City Council, or to any person or persons the City Council may appoint to examine such books and accounts at any time. But no company to whom any privilege may be granted, shall assign or transfer their franchise in said railway or railways without first obtaining the consent of the City Council thereto.

SECTION 9. And provided further, that the City of Cleveland shall not be held liable to any company for any damage any company may incur from the breakage of any sewer or water pipe, or from any delay that may be caused by the construction of sewers, the laying of water and gas pipes, or the necessary repairing of the same, or from any other delay or damage that may be caused by fire or otherwise; all rights vested in the City Council, the Trustees of water works, or Gas Company, in respect to the care and improvement of the streets, the construction of sewers, culverts or drains, and the laying of water or gas pipes therein, are in no way to be impaired or affected by any privilege that may be granted to any company, but the rights and privileges granted to any company, by virtue of this ordinance, shall be subject thereto; and any such company shall be liable for any loss or injury that any person may sustain by reason of any carelessness, neglect, or misconduct of their agents or servants, in the management, construction or use of said tracks or railways, and any such company shall indemnify and hold the City harmless from any damage that may be claimed by property holders, or by any person or persons, on account of the laying of the track, or in the use, or by reason thereof, or by running the cars thereon.

425 SECTION 10. The president and secretary of each and every such company shall, on the first Tuesday of June in each year, during the continuance of the contract, furnish to the City Council a full and complete list of the stockholders thereof, and such statement shall be verified by the oaths of said President and Secretary, to be administered by a notary public of Cuyahoga County, and attested by his seal.

SECTION 11. And be it further ordained, that the following specifications, regulating the running of street railroads in Cleveland, be required of each and every company taking out license under the provisions of this ordinance, viz:

1st. While the cars are turning the corners from one street to another, the horses or mules shall not be driven faster than a walk.

2nd. Cars driven in the same direction shall not approach — other within a distance of three hundred feet; and the rate of speed of all cars shall be subject to the direction of the City Council from time to time.

3rd. No cars shall be allowed to stop on a cross-walk, nor in front of any intersecting street, except to avoid collision, or to prevent danger to persons in the street; nor shall any car be left or remain standing on any street at any time, unless the same be attached to a team and waiting for passengers.

4th. When the conductor of any car is required to stop at the intersection of streets, to receive or leave passengers, the cars shall be stopped so as to leave the rear platform slightly over the crossing.

5th. The conductors and drivers of each car shall keep a vigilant watch for all teams, carriages, persons on foot, and especially children, either on the track or moving towards it, and on the first appearance of danger to such team or person, or other obstruc-
426 tions, the car shall be stopped in the shortest time and space possible.

6th. The conductor shall not allow ladies and children to enter or leave the car while in motion.

7th. Conductors shall announce to the passengers the names of the streets, or places wherever the cars cross in connection with any other railway track.

8th. The cars after sunset shall be provided with signal lights.

SECTION 12. The cars shall be entitled to the track, and any vehicle upon the track of said company shall turn out when any car comes up, so as to leave the track unobstructed, and the drivers of any vehicle refusing to do so, when requested by the driver of any car, shall be liable to a penalty not exceeding five dollars on conviction before the Police Court, and costs of prosecution, and all fines collected under this section shall be paid into the City Treasury to the credit of the school fund. Provided that if any person or persons shall have any cause to remove any building or other large and heavy substance, they shall be allowed reasonable and sufficient time to remove, load or unload the same, without being liable to the penalty attached by this section; provided that such person or persons shall have first obtained the consent of the Board of City Improvements for such removal.

SECTION 13. No contract under the provisions of this ordinance shall be made for a longer period than twenty years from the date of the passage of this ordinance.

SECTION 14. An ordinance entitled "An ordinance prescribing the terms and conditions of street passenger railways within the City of Cleveland," passed July 19, 1859, be and the same is hereby repealed, and this ordinance shall take effect and be in force from and after its passage.

Passed Sept. 20th, 1859.

L. C. THAYER,
Pres. of the Council pro tem.

J. B. BARLETT,
City Clerk.

427 An Ordinance prescribing the terms and conditions of street passenger railways within the City of Cleveland.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That any individual or company to whom shall be granted the privilege of laying down rails for running street passenger cars, to be drawn by horses or mules through the streets of the City of Cleveland, after the passage of this ordinance, shall be guided, governed and regulated by the following conditions, and such restrictions as the Council may hereafter pass.

SECTION 2. No individual or company shall be permitted to lay down any track or tracks in any of the streets or public highways of said city, without first having obtained the consent of the City Council by resolution, designating the company to whom the privilege is granted, and the streets or highways or parts thereof, through which said track shall pass. Provided, that before such resolutions shall be passed, or permission be granted to any individual or company for the purpose aforesaid, notice of the intention to make the grant, or give the consent, and inviting proposals therefor, and a specified time and place shall be published for three successive weeks in one or more of the principal newspapers of the city, and no grant shall be made, nor shall such consent be given, except to such individual or company as will agree to carry passengers upon said railroad at the lowest rates of fare.

SECTION 3. That when any such grant or consent is given by the City Council, the individual or company obtaining such grant or consent, shall not proceed to lay down or construct said railroad until the consent in writing of a majority of the owners of the lots or parcels of land bounding or abutting upon the streets or public highways or parts thereof, through which said railroad shall pass, shall be obtained and filed with the City Council.

428 SECTION 4. No more than one passenger railway, with such a number of turn-outs or switches and of such lengths as may be allowed by the City Council, shall be laid in any street or public highway nor shall any track be within twelve feet of the sidewalk, except by permission of the City Council. All tracks laid shall be of the gauge of four feet eight and one-half inches, and with a rail having a lower tramway of at least three and one-half inches wide, and not more than half an inch below the upper tramway, and laid in such a manner as to be no impediment to the free and ordinary use of the streets, and the passage of wagons, carriages and other vehicles on or across such track at any point, and in any and all directions, with suitable bridges at all gutters, so as to permit the flow of water under the same, and on such grades as are now, or may be hereafter established by the City Council, and subject at all times to be taken up and relaid whenever deemed necessary by the City Council, for the purpose of regrading any street or highway, constructing sewer or laying water pipes therein. Any individual or company to whom any such privilege shall be granted by the City, shall be required to pay for the paving with the same material as shall be recommended by the Board of City Improvements, and adopted by the City Council, the space between the outer lines of the

rails of their main tracks, and switches or turn-outs and one foot outside of each of their rails, through any street or portion thereof, through which said street railroad may pass, whenever the City Council shall deem it necessary to preserve an even and hard surface thereon; and such railroad company shall, and is hereby required to keep in repair, to the satisfaction of the Board of City Improvements, the space so paved and the space of the same width upon all unpaved streets during the continuance of this, their grant; provided that not more than one track shall be laid in any street or public highway without the consent of a majority in interest of the owners of property abutting thereon, and the consent of the Council being first had and obtained; and for the purpose of determining what is a majority in interest, reference shall be had to the assessed value of the whole of the property located upon such street or highway; and provided also, that such double track shall only be laid in
429 such parts of the streets or highways as are paved or about to be paved, when such double track shall be laid.

SECTION 5. Any individual or company to whom the privilege aforesaid shall be granted shall place and maintain upon said railways, the most approved cars, with all the modern improvements for the convenience and comfort of the passengers, and they shall run cars thereon as the public convenience may require, and under such directions as the City Council may from time — prescribe.

SECTION 6. And provided any such individual shall not charge more than the sum proposed in the proposition upon which said grant is awarded; for each passenger carried, which sum shall include all government and other taxes.

SECTION 7. And provided further, that the City of Cleveland shall not be held liable to any company for any damages that they may incur from the breakage of any sewer or water pipe, or from any delay that may be caused by the construction of sewers, the laying of water or gas pipes, or the necessary repairing of the same, or for moving buildings over or along said track, or from any other delay or damage that may be caused by fire, water or otherwise. All rights vested in the City Council, the Trustees of Water Works, or Gas Company, in respect to the care and improvement of streets or highways, the construction of sewer, culverts, or drains, and the laying of water or gas pipes therein, and the necessary moving of buildings, thereon, are to be in no way impaired or affected by any privilege that may be granted to any individual or company, but the rights and privileges granted by virtue of this ordinance shall be subject thereto; and any company shall be liable for any loss or injury that any person may sustain by reason of any carelessness, neglect or misconduct of their agents or servants, in the management, construction or use of said tracks or railways and any such company shall indemnify and hold the City harmless from any damage that may be claimed by property holders, or by any person or persons, on account of the laying of the track, or in the use, or by reason thereof, or by running cars thereon.

430 SECTION 8. The President and Secretary of such and every such company shall, on the first Tuesday of June in

each year, during the continuance of the contract, furnish to the City Council, a full and complete list of the stockholders thereof, and such statement shall be verified by oath of said President and Secretary, to be administered by a Notary Public of Cuyahoga County, and attested by his seal.

SECTION 9. And be it further ordained, that the following specifications regulating the running of street railroads in the City of Cleveland, be submitted to by each and every company to whom the license shall be granted under the provisions of this ordinance, viz:

1st. While the cars are turning the corners from one street to another, the horses or mules shall not be driven faster than a walk.

2nd. Cars driven in the same direction shall not approach each other within a distance of three hundred feet: and the rate of speed for all cars shall be subject to the directions of the City Council from time to time.

3rd. No car shall be allowed to stop at a crosswalk, nor in front of any intervening street, except to avoid collision, or to prevent danger to persons in the street; nor shall any car be left standing in any street or highway, at any time, unless the same is attached to a team and waiting for passengers.

4th. When the conductor of any car is required to stop at the intersection of streets, to receive or to leave passengers the car shall be stopped so as to leave the rear platform slightly over the crosswalk.

5th. The conductors and drivers of each car shall keep a vigilant watch for all teams, carriages, persons on foot, and especially
431 children, either on track or moving towards it, and on the first appearance of danger to such team or person, or other obstruction, the car shall be stopped in the shortest time and space possible.

6th. The conductor shall not allow ladies and children to enter or leave the car while in motion.

7th. Conductors shall announce to the passengers the names of the streets or places wherever the cars cross in connection with any other railway track.

8th. The cars, after sunset, shall be provided with signal lights, and each shall at all times have a bell attached to some portion of the harness.

10th. The cars shall be entitled to the track, and any vehicle upon the track of said company shall turn out when any car comes up, provided sufficient time has been allowed such vehicle after notice has been given, so as to leave the track unobstructed; and the drivers of any vehicle refusing to do so, when requested by the driver of any car, shall be liable to a penalty not exceeding five dollars, on conviction before the Police Court, and costs of prosecution; and all fines collected under this section shall be paid to the City Treasury, to the credit of the school fund; Provided that if any person or persons shall have cause to remove any building or other large and heavy substance, they shall be allowed reasonable and sufficient time to remove, load and unload the same, without being liable to the penalty attached by this section; provided that such person shall

have first obtained a permit for that purpose from the Board of City Improvements for such removal.

SECTION 11. That any company to whom the privilege of laying down a street railway through the streets or highways of Cleveland may be granted, is hereby required to keep clean and free from dirt, so much of the roadway of the different streets and
432 highways through — their railroad may pass, as may be occupied by their respective tracks, and that in all cases where said railroads pass through paved streets, the company shall cause the dirt or street cleanings removed along the line of their respective tracks to be placed in heaps in such manner as not to interfere with the free use of the streets by the public; and where said railroads pass through streets not paved, said company shall cause the dirt or street cleanings removed from along their tracks, to be distributed evenly over the surface of the street along their lines; and in all cases when it becomes necessary to remove snow or ice from said tracks, it shall be distributed evenly over the surface of the streets so as not to interfere with the free use and occupancy of the same by the public.

SECTION 12. Any company to whom the aforesaid privileges shall be granted is hereby required to pay their pro-rate share of the cost of sprinkling any street or highway through which their railroad may be built; whenever the City Council shall, by ordinance determine that such street or highway shall be sprinkled, and in order to determine what such pro-rate share may be, the area of the whole portion of the street or highway occupied by the tracks of such railroad company shall be computed, and the amount to be paid by such company shall bear the same relation to the whole cost of such sprinkling as the area of the street bears to the whole area sprinkled.

SECTION 13. It is further provided, that said companies shall perform all and singular the conditions of this ordinance, together with all and singular the further and future orders of the Council in relation to said railroad.

SECTION 14. That in case of failure to perform either of the above named conditions, the privileges granted to any company, under this ordinance, shall become null and void, upon the adoption of a resolution by the City Council to that effect.

433 SECTION 15. Any company who shall build any street passenger railway under this ordinance, shall be required to pay to the City of Cleveland a license fee of ten dollars per annum for each car or carriage placed upon their railway.

SECTION 16. No grant under the provisions of this ordinance shall be made for a longer period than twenty years from the date of each grant.

SECTION 17. That the terms and conditions of this ordinance, except so much of section four, as fixes the gauge of street railroads built under the same, shall be the terms and conditions governing the extension of all street railroads within the City of Cleveland.

SECTION 18. That any company, to whom the privileges herein named shall be granted, may be required to pay to the City Treasurer upon the estimates of the City Civil Engineer, the original cost of paving the space within the outer lines of their rails in all

streets that are paved, at the time such grant may be given; said amount to be pro-rated back to the owners of the abutting property.

SECTION 19. Any conductor who shall collect of any passenger more than the allowed legal fare, shall, with the officer of the company by whose order or direction he collects the same, be deemed guilty of a misdemeanor; and on conviction thereof in the Police Court, shall pay a fine of not less than five, nor more than twenty dollars for each offence.

SECTION 20. Any officer or employee of any street railroad company who shall violate any of the provisions of this ordinance, or aid or abet the same, shall be deemed guilty of a misdemeanor, and on conviction of the same in the Police Court, shall pay a fine of not less than five nor more than twenty dollars for each
434 offense.

SECTION 21. This ordinance shall take effect from and after its passage.

Passed Dec. 4th, 1866.

F. W. PELTON,
Pres. of the Council.

C. E. HILL,
City Clerk.

435 An Ordinance to amend section four of an ordinance entitled "An Ordinance prescribing the terms and conditions of Street Passenger Railways within the City of Cleveland."

SECTION 1. Be it ordained by the City Council of the City of Cleveland, that Sec. 4 of an ordinance entitled "An ordinance prescribing the terms and conditions of Street Passenger Railways" be so amended to read as follows, viz:

SECTION 4. No more than one passenger railway, with such number of turn-outs or switches, and of such lengths as may be allowed by the City Council, shall be laid in any street or public highway; nor shall any track be laid within twelve feet of the sidewalk, except by the permission of the City Council. All tracks laid shall be of uniform gauge of four feet eight and one-half inches (4′ 8½″) and with a rail having a lower tramway of not less than three inches wide, and not more than eleven-sixteenths of an inch below the upper tramway; the outer edge to be at right angles to the lower surface of the rail, and laid in such a manner as to be no impediment to the free and ordinary use of the streets and passage of wagons, carriages and other vehicles, on or across such track at any point, and in any and in all directions, with suitable bridges a*l* all gutters, so as to permit the flow of water under the same, and on such grades as are now or may be hereafter established by the City Council, subject at all times to be taken up and relaid whenever deemed necessary by the City Council, for the purpose of regrading or paving any street or highway, constructing sewers or laying water pipes therein. Any individual or company to whom any such privilege shall be granted by the City, shall be required to pay for paving with the same material as shall be recommended by the Board of City Improvements and adopted by the City Council, the space be-

tween the outer lines of the rails of their main tracks, and switch
or turn-outs, and one foot outside of the outer lines of each of th
rails, through any street or portion thereof, through which said ra
way may pass, whenever the City Council shall deem it necessary
preserve an even and hard surface thereon.

436 And such railroad company shall, and is hereby requir
to keep in repair, to the satisfaction of the Board of City I
provements, the space so paved, and the space of the same wid
upon all unpaved streets during the continuance of this, their gra
provided that not more than one track shall be laid in any str
or highway, without the consent of the majority in interest of t
owners of property abutting thereon, and the consent of the Coun
being first had and obtained; and provided also, that such doub
track shall *not* only be laid in such parts of the streets or hig
ways as are paved or about to be paved, when such double tra
shall be laid.

SECTION 2. That Section four (4) of the above-named Ordinan
to which this is amendatory, be and the same is hereby repealed, a
that this ordinance shall be in force and take effect on and after
passage.

Passed June 11th, 1867.

AMOS TOWNSEND,
Pres. of the Council.

C. E. HILL,
City Clerk.

(Here follows map marked page 437.)



FOLD OUT IS TOO LARGE TO BE FILMED

438 *Certificate of Incorporation of The East Cleveland Railroad Company.*

Know all persons to whom this may come, that this is to certify that we, Ephraim T. Sturtevant, Samuel E. Adams, Isaac Sherman, Milo Hickox, Robert Harlow, John Welch and Joseph Slaight, of the Township of East Cleveland in the County of Cuyahoga and State of Ohio, under and by virtue of the provisions of an act of the General Assembly of the State of Ohio passed May 1st, 1852, entitled "An act to provide for the creation and regulation of Incorporated companies in the State of Ohio," and the several acts amendatory and supplemental hereto, have, and hereby do, associate ourselves together as a body corporate under the name and style of the "East Cleveland Railroad Company" for the purposes of constructing, equip-ing and maintaining a Railroad, commencing at the intersection of the Euclid and Newburgh roads at Doans corners in said Township of East Cleveland, and running thence westerly to, and into the City of Cleveland in said County of Cuyahoga, and terminating at, or near the South westerly corner of the Public Square, with a capital stock of Fifty Thousand Dollars to be employed in the construction and equipment of said Railroad.

In witness whereof we have severally hereto set our hands and seal this 28th day of February 1859.

E. T. STURTEVANT. [SEAL.]
S. E. ADAMS. [SEAL.]
ISAAC SHERMAN. [SEAL.]
MILO HICKOX. [SEAL.]
ROBERT HARLOW. [SEAL.]
JOHN WELCH. [SEAL.]
JOSEPH SLAIGHT. [SEAL.]

THE STATE OF OHIO, *Cuyahoga County, ss:*

Before me Edwin Fuller one of the Justices of the Peace within and for said County, on this 28th day of February, 1859, personally appeared the above named Ephrain T. Sturtevant, Samuel E. Adams, Isaac Sherman, Milo Hickox, Robert Harlow, John Welch and Joseph Slaight who are known to me to be the persons
439 who executed the above certificate and acknowledged the same to — their free act and deed for the purposes in said certificate mentioned.

In witness whereof I have hereto set my official signature and seal this 28th day of February, 1859.

EDWIN FULLER, [SEAL.]
Justice of the Peace.

THE STATE OF OHIO, *Cuyahoga County, ss:*

I, Roland D. Noble, Clerk of the Court of Common Pleas, a court of record of Cuyahoga aforesaid, do hereby certify that Edwin Fuller before whom the above acknowledgement was made, was at its date

a Justice of the Peace in and for said County duly authorized by the laws of Ohio to take the same and that I am well acquainted with his handwriting and believe his signature thereto is genuine and that the above instrument is executed and acknowledged according to the laws of the state of Ohio.

[L. S.] In testimony whereof I have hereunto subscribed my name and affixed the seal of said court at Cleveland this 1st day of March, A. D. 1859.

ROLAND D. NOBLE, *Clerk.*

SECRETARY OF STATE'S OFFICE,
COLUMBUS, O., *March 2d*, 1859.

I hereby certify that the foregoing certificate of association of the East Cleveland Railroad is a true copy from the original now of file and of record in this office.

[L. S.] Witness my official signature and the great seal of the state at the time and place above written.

A. P. RUSSELL,
Secretary of State.

440 Sections 1, 16 and 17 of chapter 58 of the codified ordinances of the City of Cleveland, Passed March 12, 1877.

SECTION 1. Any individual or company to whom shall be granted the privilege of laying down rails for running street passenger cars, to be drawn by horses or mules through the streets of the city, shall be guided, governed and regulated by the following conditions, and such restrictions as the Council may hereafter pass.

SECTION 16. No grant under the provisions of this chapter shall be made for a longer period than twenty years from the date of each grant.

SECTION 17. The terms and conditions of this chapter, except so much of section four as fixes the gauge of street railroads built under the same, shall be the terms and conditions governing the extension of all street railroads within the city.

441 Sections 973, 995 and 996 of the Revised Ordinances of the City of Cleveland, 1890.

SECTION 973. Every individual, company or corporation to whom shall hereafter be granted the privilege to construct and operate street railroads in the City of Cleveland, and all persons, companies and corporations operating roads already established, shall be guided, governed and regulated by the following and such further conditions and restrictions as the City Council shall hereafter ordain.

SECTION 995. No grant under the provisions of this chapter shall be made for a longer period than twenty-five years from the date of each grant.

SECTION 996. Any individual, company or corporation owning, operating or having the right to construct a street railroad, that desires to extend the same, or to lay an additional track or tracks to

be used in connection therewith, shall make application to the City Council in form as provided in Section 974 hereof, which application shall be referred to the Board of Improvements for consideration and report. Said Board shall, if it approves the same, prepare an ordinance providing for such extension, or the laying of such additional track or tracks, upon such terms and conditions not inconsistent herewith, as it shall deem just and proper, and shall transmit the same, together with the application, to the City Council; *Provided*, that before such ordinance is transmitted, the applicant for such grant shall file with said Board the written consent of a majority of the property holders on the line of the proposed street railroad represented by the foot front of lots abutting on the street along which such extension or additional track is proposed to be constructed, and *provided*, that no right in any such extension or additional track shall be made to continue beyond the period specified in the grant for the main line. Nothing herein contained shall operate to prevent the grant of a right to extend any road already in operation upon the same gauge now in use.

442 An Ordinance to permit the East Cleveland Railroad Company to extend its line of railway on Hayward street and Cedar avenue from Hayward street to Fairmount street.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That The East Cleveland Railroad Company be and is hereby authorized and empowered to extend its line of railway from the present track at the intersection of Prospect street and Hayward street southerly on and along said Hayward street to Cedar avenue, thence easterly on and along said Cedar avenue to Fairmount street, and to equip and operate said extension as a single track railway, with all necessary switches and turn-outs, in connection with its main line, and terminating with the grant for the main line, but with the express condition that no increase of fare shall be charged by said company on any part of its main line or in said extension by reason of said extension, so that but one fare shall be charged between the eastern terminus of said extension and western terminus of its main line; Provided, that that part of said extension extending from the intersection of Prospect street and Hayward street to Giddings avenue shall be completed and in operation within six months after the passage of this ordinance, and that the balance of said extension, extending from said Giddings avenue to Fairmount street, shall be completed and in operation on or before the 1st day of June, 1883, also further provided, that when the right of way shall be granted from the intersection of said Hayward street, westerly on and along said Cedar avenue, and on and along Perry street from Cedar avenue to Prospect street, that said railroad company shall remove its track on Hayward street and build said track on and along said Cedar avenue and Perry street to the intersection of said Prospect street, there to connect with its main line, said removal and further extension to be constructed within sixty days after the passage of the proper ordinances and under the direction of the Board of Improveemnts.

443 SECTION 2. This grant is made subject to all ordinances of said City Council of the City of Cleveland now in force or which may hereafter be duly passed providing for the construction, operation and government of street railroads.

SECTION 3. That this ordinance shall be in force from and after its passage and legal publication.

Passed February 20, 1882.

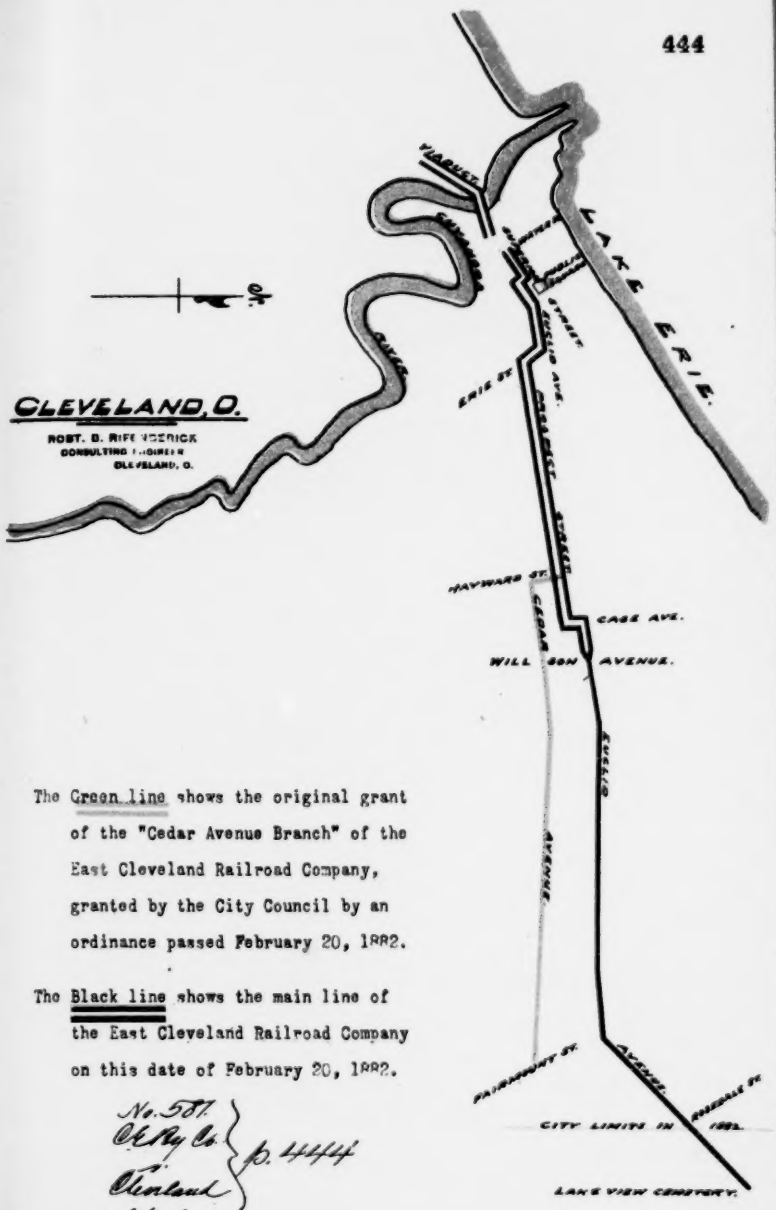
To the Honorable City Council of the City of Cleveland.

GENTLEMEN: The East Cleveland Railroad Company hereby accepts the terms and conditions set forth in the ordinance, passed Feb. 20th, 1882, granting to the said company the right to construct and operate a street railroad upon certain streets of the city.

EAST CLEVELAND RAILROAD COMPANY,
By A. EVERETT, *Pres.*

Received March 6th, 1882.

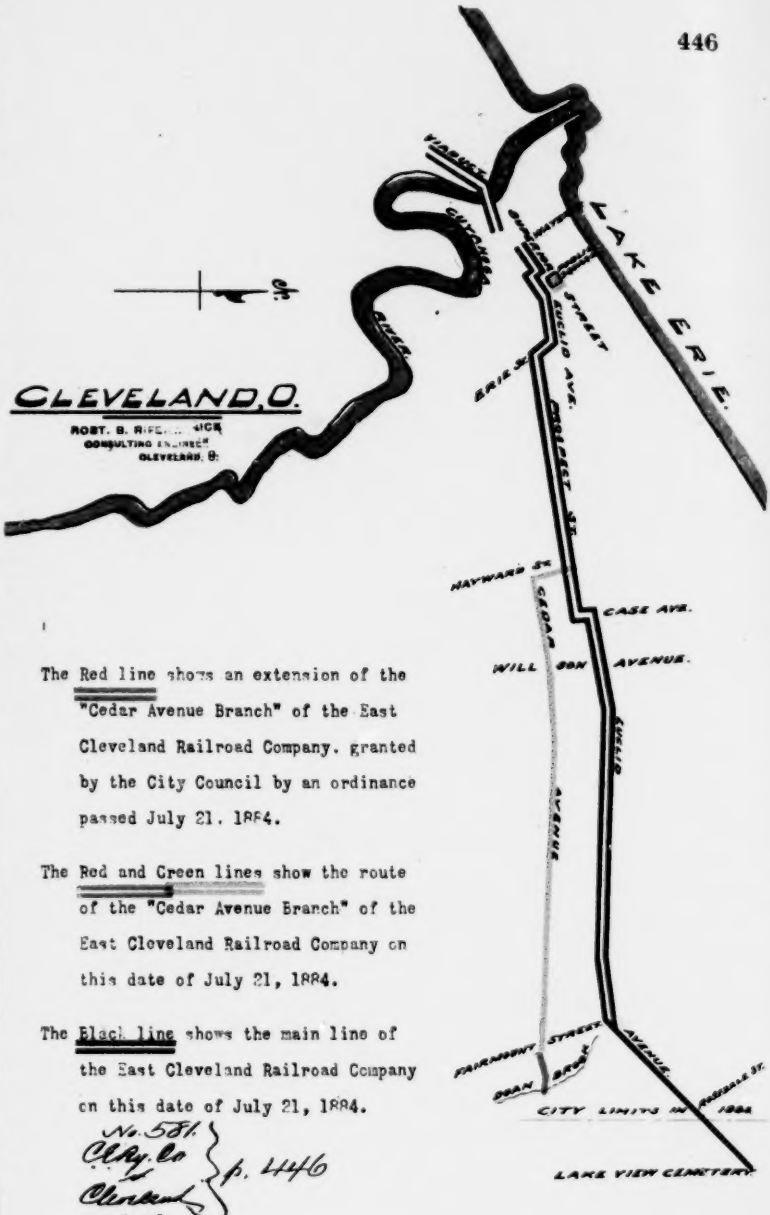
(Here follows map marked page 444.)



The Green line shows the original grant of the "Cedar Avenue Branch" of the East Cleveland Railroad Company, granted by the City Council by an ordinance passed February 20, 1882.

The Black line shows the main line of the East Cleveland Railroad Company on this date of February 20, 1882.

No. 581.
C. R. Ry. Co.
Cleveland
Sheet.
p. 4444



The Red line shows an extension of the "Cedar Avenue Branch" of the East Cleveland Railroad Company, granted by the City Council by an ordinance passed July 21, 1884.

The Red and Green lines show the route of the "Cedar Avenue Branch" of the East Cleveland Railroad Company on this date of July 21, 1884.

The Black line shows the main line of the East Cleveland Railroad Company on this date of July 21, 1884.

No. 581.
Cl. Ry. Co.
Cleveland
Stat.
p. 446

445 An ordinance to permit the East Cleveland Railroad Company to extend the Cedar avenue branch of its railway.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That The East Cleveland Railroad Company be and is hereby authorized and empowered to extend the Cedar avenue branch of its railway from the termination of its present track at the intersection of Cedar avenue and Fairmount street in an easterly direction on and along said Cedar avenue to Doan brook and equip and operate said extension as a single track railroad in connection with said branch and its main line and terminating with the grant for the main line, but with the express condition that no increase of fare shall be charged by said company on any part of its main line or on said extension, by reason of said extension, and further provided that said extension shall be completed and in operation within thirty days after said avenue is graded as contemplated. This grant is made subject to all ordinances of said City Council now in force or which may hereafter be duly passed regulating street railroads; Provided also that said company shall pave with stone between the rails of said track along the line of said extension at the time of the construction of the same and shall keep the same paved during the term of its grant.

SECTION 2. That this ordinance shall take effect and be in force from and after its passage and legal publication.

Passed July 21, 1884.

(Here follows diagram marked page 446.)

447 *Ordinance No. 64.*

An ordinance to grant the East Cleveland Railroad Company permission to lay a double-track railroad in Perry street and Cedar avenue.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That The East Cleveland Railroad Company be and is hereby authorized and empowered to lay a double-track railroad in and along Perry street and Cedar avenue as follows, to wit: Said tracks to connect with the tracks of said company on Prospect street, at Perry street; thence southerly on Perry street to Cedar avenue; thence easterly on Cedar avenue to connect with the track of the Cedar avenue branch of said company at Hayward street, as shown on the plan accompanying the petition of said company.

SECTION 2. Said company shall construct, equip, maintain and operate said road when constructed, as an extension of their Cedar avenue branch of their street railroad, and shall pave the space between the outer rails of said double track with cobble stones, split and laid in cement, at said company's own expense, under the direction of the City Civil Engineer.

SECTION 3. That in case of failure by neglect or otherwise on the part of said East Cleveland Railroad Company, its successors or assigns, to perform all and singular the conditions of this ordinance, or the general ordinances of the city governing street railroads now or hereafter in force or amendments thereto, the privilege herein granted shall become void and of no effect, and shall cease upon the passage of an ordinance to that effect. The rights herein granted shall terminate at the expiration of the present charter for the said company's main line.

SECTION 4. This ordinance shall be in force from and after its passage and legal publication, and the payment by said company of the expense of publishing the same, and the filing in the
448 office of the City Clerk a written acceptance of the terms and conditions hereof.

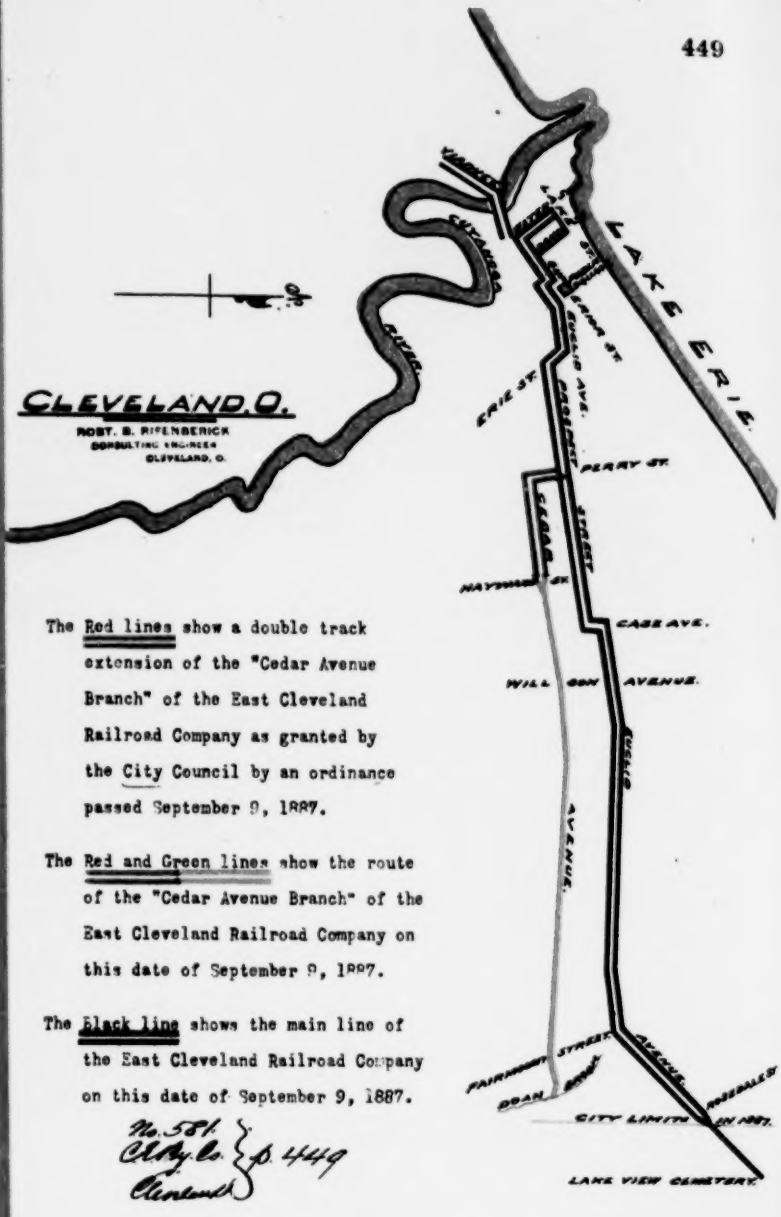
W. M. BAYNE,
Pres. Board of Councilmen.
JAMES LAWRENCE,
Pres. Board of Aldermen.

Passed Sept. 9, 1887.

Approved Sept. 10, 1887.

D. D. BABCOCK, *Mayor.*

CHARLES P. SALEN,
City Clerk.



The Red lines show a double track extension of the "Cedar Avenue Branch" of the East Cleveland Railroad Company as granted by the City Council by an ordinance passed September 9, 1887.

The Red and Green lines show the route of the "Cedar Avenue Branch" of the East Cleveland Railroad Company on this date of September 9, 1887.

The Black line shows the main line of the East Cleveland Railroad Company on this date of September 9, 1887.

No. 581
Cl. Ry. Co.
Cleveland
p. 449

Acceptance.

CLEVELAND, OHIO, *Sept.* 12, 1887.

To the Honorable the Common Council of the City of Cleveland.

GENTLEMEN: We would hereby respectfully accept the terms and conditions of Ordinance No. 64, granting us the permission to build, equip and operate a double track extension of our Cedar Avenue line from Hayward street westerly to Perry street, and northerly upon Perry street to connect with our tracks on Prospect street.

THE EAST CLEVELAND RAILROAD COMPANY,
By A. EVERETT, *President.*

(Here follows diagram marked page 449.)

450 *An Ordinance.*

An ordinance to grant the East Cleveland Railroad Company the permission to lay a second or additional track in Cedar avenue from Hayward street to Willson avenue.

SECTION 1. Be it ordained by the Common Council of the City of Cleveland, That the East Cleveland Railroad Company, its successors and assigns, be and is hereby authorized and empowered to lay a second or additional track in and upon Cedar avenue, from the easterly line of Hayward street, in and along said Cedar avenue to the easterly line of Willson avenue, and to connect the tracks herein authorized with the tracks now laid upon Cedar avenue west of Hayward street and east of Willson avenue, as per plat accompanying the petition of said company.

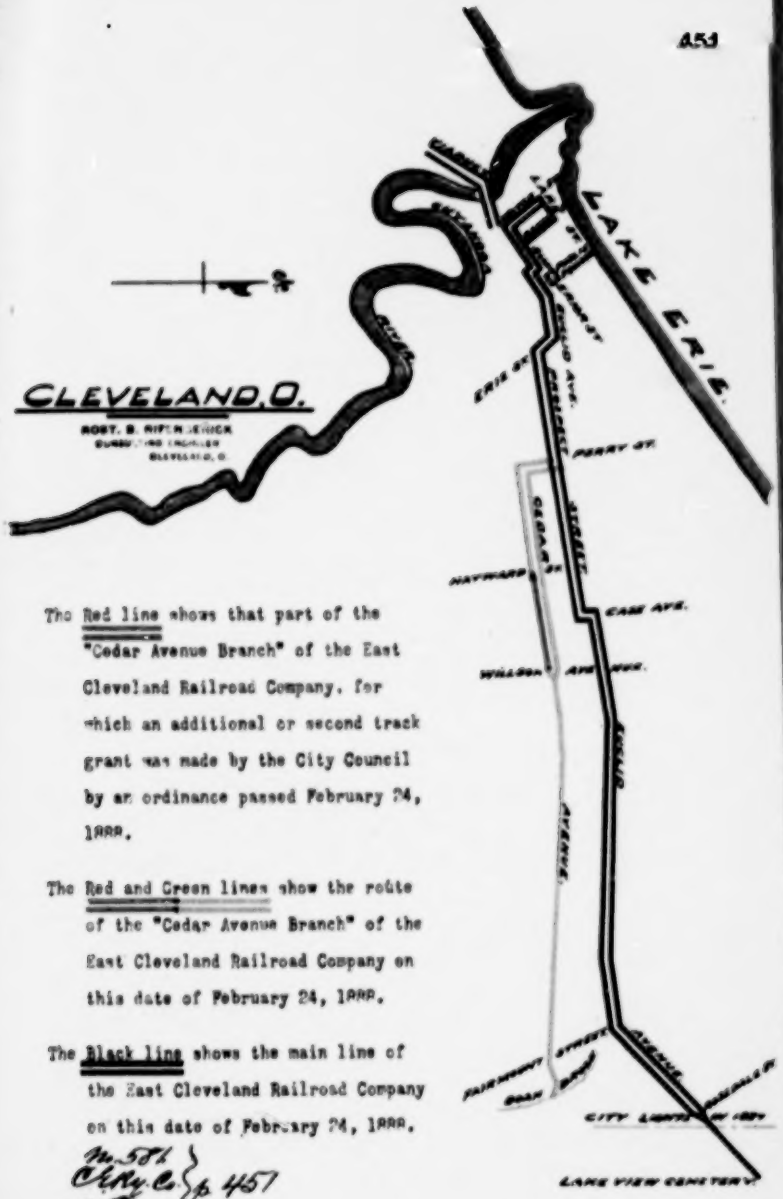
SECTION 2. Said company shall pave the space between the outer rails of said double track with cobblestones, split and laid in cement, at said company's own expense, under the direction of the Board of Improvements.

SECTION 3. That in case of failure, by neglect or otherwise, on the part of said East Cleveland Railroad Company, its successors or assigns, to perform all and singular the conditions of this ordinance of the general ordinances of the city governing street railways now or hereafter in force, the privilege herein granted shall become void and of no effect and shall cease upon the passage of an ordinance to that effect. The right herein granted shall be valid until the expiration of the grants for the said company's main line.

SECTION 4. This ordinance shall be in force from and after its passage and legal publication and the payment by said company of the expense of publishing the same and the filing in the office of the City Clerk a written acceptance of the terms and conditions thereof.

Passed by the Common Council February 24, 1888.

(Here follows diagram marked page 451.)



The Red line shows that part of the "Cedar Avenue Branch" of the East Cleveland Railroad Company, for which an additional or second track grant was made by the City Council by an ordinance passed February 24, 1888.

The Red and Green lines show the route of the "Cedar Avenue Branch" of the East Cleveland Railroad Company on this date of February 24, 1888.

The Black line shows the main line of the East Cleveland Railroad Company on this date of February 24, 1888.

No. 581
Cl. Ry. Co. } p. 457
Cleveland

452 *An Ordinance.*

An ordinance to grant the East Cleveland Railroad Company the right to construct and operate a second or additional track upon Cedar avenue from Bolton avenue easterly to the easterly limits of the city of Cleveland.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That the East Cleveland Railroad Company, its successors or assigns be and is hereby authorized and empowered to lay and operate a second or additional track in and upon Cedar avenue from Bolton avenue easterly to the city limits, and connecting with tracks now in Cedar avenue at Bolton avenue and the city limits, upon the following conditions:

SECTION 2. That said street railroad company owning or operating said street railroad upon any portion of said street, between the points aforesaid shall, upon notice from the Board of Improvements, be required to grade, pave and improve, at its own expense, the space between the rails of each and all of its tracks, switches and turn-outs, and the space between the two tracks, and pay to the city on demand the cost of setting back the curb to such width of roadway as the Board of Improvements may direct, and gas and water connections and catch basins, and for all new curb required and setting the same; said work to be done under the direction and to the acceptance of the Board of Improvements at the same time or before the street is paved and with the same material and quality of paving as the balance of the roadway shall be paved.

SECTION 3. This ordinance shall take effect and be in force from and after its passage and acceptance in writing by said railroad company, and the payment to the City Comptroller for adver-

453 tising the same.

SECTION 4. This ordinance is subject to all ordinances now in force or that may hereafter be passed governing and regulating street railroads and all ordinances or resolutions of the City Council relative to the improvements of the street upon which said double tracks are to be laid, and the rights herein granted shall expire with the grants for said company's main line, *i. e.*, July 14, 1913.

Passed Oct. 13, 1890.

F. O. SPENCER,
Pres. of the Council.

H. H. BURGESS,
City Clerk.

Acceptance.

CLEVELAND, OHIO, *Oct.* 23, 1890.

To the Honorable, the City Council, of the City of Cleveland.

GENTLEMEN: We would respectfully accept the terms, conditions, limitations and restrictions of Ordinance 1472 passed by your Honorable Body on Oct. 13th, 1890, entitled: "An Ordinance to grant the

East Cleveland Railroad Company the right to construct and operate an additional track upon Cedar avenue from Bolton avenue easterly to the easterly limits of the City of Cleveland," and hereby agree to comply with the requirements thereof, as above stated.

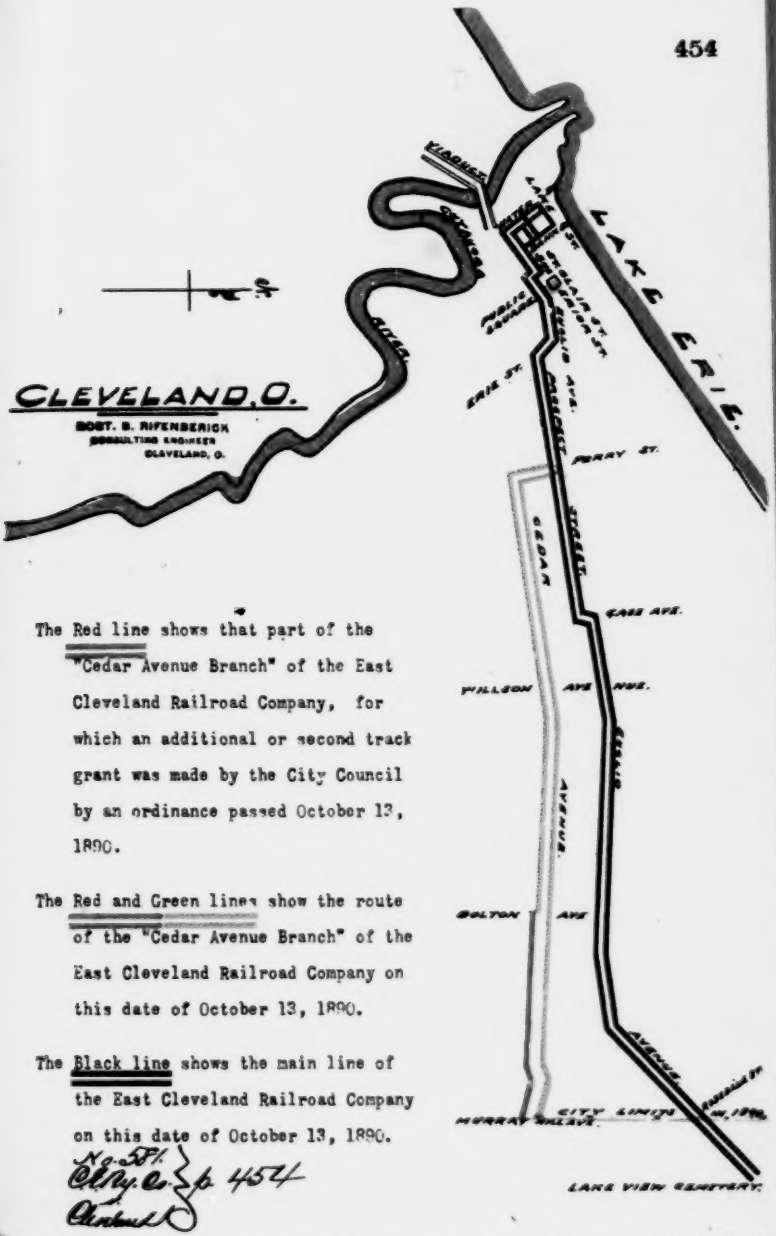
Respectfully submitted,

By A. EVERETT, *President.*

Attest: H. A. EVERETT, *Sec.*

Received Oct. 27, 1890.

(Here follows diagram marked page 454.)



The Red line shows that part of the "Cedar Avenue Branch" of the East Cleveland Railroad Company, for which an additional or second track grant was made by the City Council by an ordinance passed October 13, 1890.

The Red and Green lines show the route of the "Cedar Avenue Branch" of the East Cleveland Railroad Company on this date of October 13, 1890.

The Black line shows the main line of the East Cleveland Railroad Company on this date of October 13, 1890.

No. 5 ½
Cl'd Ry. Co. } p. 454
Exhibit



455 *Ordinance No. 693.*

An ordinance to grant the East Cleveland Railroad Company the right to extend its street railroad along and upon Case, Perkins, Willson, Hough, Dunham and Wade Park avenues, and to operate said extension by electricity or horse power.

SECTION 1. Be it ordained by the Common Council of the City of Cleveland, that the East Cleveland Railroad Company, its successors and assigns, are hereby authorized and empowered to extend their line of street railroad as a double track railroad, with the necessary curves and crossovers as determined and approved by the Board of Improvements, from the intersection of Euclid and Case avenues, in a northerly direction in Case avenue to Perkins avenue, thence easterly in Perkins avenue to Willson avenue; thence northerly in Willson avenue to Hough avenue; thence easterly in Hough avenue to Dunham avenue; thence northerly in Dunham avenue to Wade Park avenue; thence easterly in Wade Park avenue to the easterly limits of the city, in accordance with the plan of said tracks, curves and cross-overs, filed with the Board of Improvements the seventh day of Sept., 1888, and said extension herein authorized to be constructed and operated on or before July 1, 1889, in accordance with the general street railroad ordinance of the city and subject to the approval of the Board of Improvements.

SECTION 2. That if the motive power to operate the extension herein provided for, shall be by electricity, the nature, kind and height of poles and wires or other appliances necessary for its successful operation upon the public streets shall be under the control and subject to the approval of the Board of Improvements and City Civil Engineer, and said railroad company shall pay the city for all engineering and supervision deemed necessary in the proper construction, and placing of said tracks, paving, wires, poles, etc.

456 SECTION 3. That in all cases where pavements are now laid or in contemplation on the line of said proposed extension, said company shall grade and pave, or repave, as the case may be, at its own expense, the entire space from outer rail to outer rail, or fourteen feet in width, of all of its tracks, curves and crossovers, with the same material and kind of pavement as is laid in or contemplated for the balance of the adjoining roadway, and in case of streets now paved shall take up and relay so much of said pavement as may be required to make a good job, and upon all streets upon the balance of said route not so paved, nor in contemplation, the fourteen foot space between the outer rails shall be paved with the best quality of common Medina stone pavement laid dry, as specified for city work, all to the satisfaction and acceptance of the Board of Improvements at the same time that said tracks are laid or constructed; and in all cases upon any street where it becomes necessary in the judgment of said Board of Improvements, by reason of the laying of said tracks, to widen the roadway of any of said streets, either by setting back the curb or changing the gutters, lamp posts, water boxes, catchbasins or other improvements, all such widening

or changes shall be made at the expense of said railroad company upon the orders and to the acceptance of the Board of Improvements, whether required at the time of laying said tracks or at any subsequent time.

SECTION 4. That said permission is granted upon the express condition that no increase of fare shall be charged by said company on any part of its main line or of said extension, and but one fare not exceeding five (5¢) cents, or one of said railroad company's tickets, shall entitle a passenger to transportation over the main line and extension from the intersection of Lake and Water streets to the easterly limits of the city, or from the easterly limits of the city to the intersection of Lake and Water streets.

457 SECTION 5. That said Council reserves to itself the right to grant to any person or persons, company or corporation, a joint use, for street railroad purposes, of the tracks and appliances, trol-ey wires, poles, electricity, etc., herein provided for, upon said Willson avenue, between Perkins avenue and Hough avenue and upon Wade Park avenue between Dunham avenue and the easterly limits of the city, upon such terms and conditions as said Council shall deem just and reasonable, in case of failure of companies to come to an agreement, and that the right to construct and operate the extension of said double tracks and appliances, as herein provided for, shall terminate with the present grant for said East Cleveland Railroad Company's main line.

SECTION 6. That this grant is given to said East Cleveland Railroad Company, subject to the provisions of this ordinance, and the general ordinance regulating street railroads in the city of Cleveland, and all other ordinances now in force or that may be hereafter passed regulating street railroads and amendments thereto or hereto.

SECTION 7. That said railroad company shall file with the City Clerk, within thirty (30) days after the passage of this ordinance, a written acceptance of the conditions and privileges herein granted and therein agree to comply with and adopt and abide by all the provisions, conditions and instructions upon which the same are granted, and such acceptance of the terms of this ordinance shall be deemed an agreement by said company with the City of Cleveland to perform all and singular the conditions and things required of said company under this ordinance, otherwise this ordinance shall be null and void.

SECTION 8. That this ordinance shall be in force from
458 and after its passage and legal publication.

M. M. HOBART,
Pres. of the Council.

Passed April 12, 1889.
Approved by the Mayor.

CHARLES P. SALEN,
City Clerk.

Acceptance.

CLEVELAND, OHIO, *April* 29, 1889.

To the Honorable City Council of the City of Cleveland, Ohio.

GENTLEMEN: We would hereby respectfully accept the conditions, privileges, provisions, and instructions of an Ordinance passed by your Honorable Body on April 12, 1889, and numbered 693, and entitled "An Ordinance to grant the East Cleveland Railroad Company the right to extend its street railroad along and upon Case, Perkins, Willson, Hough, Dunham and Wade Park avenues, and to operate said extension by electricity or horse power.

And that we will proceed at once to extend and construct said street railroad in pursuance thereof.

Respectfully submitted by order of the Board of Directors.

THE EAST CLEVELAND RAILROAD COMPANY,
By A. EVERETT, *President.*
Office 1154 *Euclid Avenue.*

Received.

459 The East Cleveland Railway Company.

July 17, 1889.

This day came on to be heard the application of the East Cleveland Railway Company to occupy Lyman avenue from the limits of the City of Cleveland at Wade Park avenue to Euclid avenue, for the purpose of constructing thereon a single or double track railroad and operate the same by horses or electricity, and this part being specified that the owners of all of the property abutting upon said Lyman avenue, between the limits of the City of Cleveland at Wade Park avenue and Euclid avenue have consented to the occupancy of said street by said railroad company. The application of the said East Cleveland Railroad Company to occupy said street as aforesaid is hereby granted subject to the following terms and conditions:

1. The grade of the roadbed shall conform to the grade of said street as nearly as practical, and if at any time in the future the grade on said street is changed, said property owners shall change the grade of their roadbed to conform to the grade as so changed.

2. The space between the tracks so laid on said Lyman avenue shall be filled so as to form a good, firm roadbed for the use of teams, and the track shall be constructed and maintained so *as* that vehicles can be easily driven on or over said railroad track.

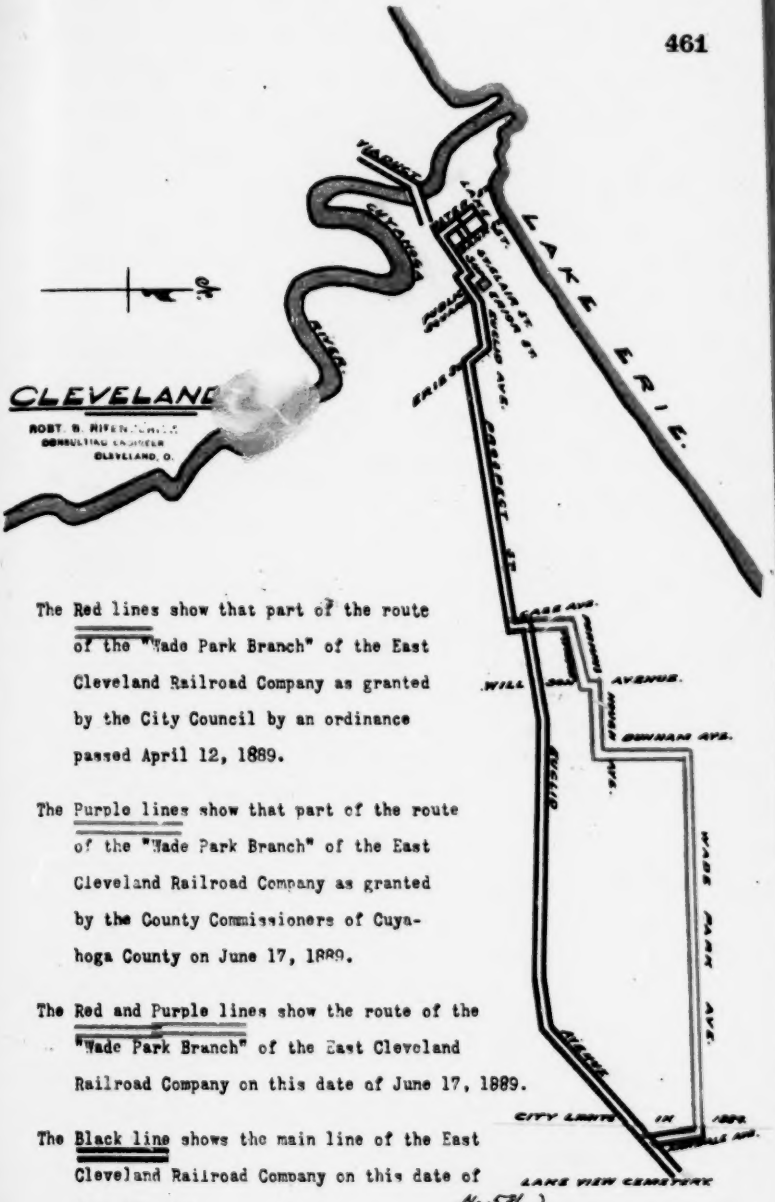
3. Whenever the property owners on said street shall deem it necessary to grade or regrade, to pave or repave or sewer the whole or any portion of said avenue occupied by said company, said company shall at its own expense, take up and relay its tracks and pave or grade

that portion of the street occupied by its tracks in the same manner as the balance of said street is paved by the property owners.

460 4. This grant is made upon the express compliance with the above condition, and for the length of time that said petitioner have the permission of the City of Cleveland to occupy Wade Park avenue.

Carried: Yeas—Schlatterback, Jerome and Mattison.
Nays—None.

(Here follows diagram marked page 461.)



The Red lines show that part of the route of the "Wade Park Branch" of the East Cleveland Railroad Company as granted by the City Council by an ordinance passed April 12, 1889.

The Purple lines show that part of the route of the "Wade Park Branch" of the East Cleveland Railroad Company as granted by the County Commissioners of Cuyahoga County on June 17, 1889.

The Red and Purple lines show the route of the "Wade Park Branch" of the East Cleveland Railroad Company on this date of June 17, 1889.

The Black line shows the main line of the East Cleveland Railroad Company on this date of June 17, 1889.

No. 58 Cl. Ry. Co. Cleveland } p. 461

462 Endorsements: No. 6851. In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division. The Cleveland Electric Railway Company, Complainant, *vs.* The City of Cleveland and the Forest City Railway Company, Defendants. Ordinances, resolutions, communications, maps, etc., relating to the Garden Street branch and main line of the East Cleveland Railroad Company and its successor the Cleveland Electric Railway Company to which reference has been made in the bill of complaint, answer to same, and in the arguments of council to the court. Compiled and drawn by Robt. B. Rifenberick, Consulting Engineer, 1522 Williamson Bldg., Cleveland, Ohio. Filed Jan. 2, 1906. Irvin Belford, Clerk, U. S. Circuit Court, N. D. O.

463 (*Opinion of the Court.*)

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

No. 6851. Equity.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendants.

Opinion of the Court.

TAYLER, *J.* (orally, at close of argument):

I have already held, and unqualifiedly adhere to the holding, that the right of the complainant company to maintain a railroad in the streets comprising this street railroad route expired on the twenty-second day of last March.

But that does not carry with it a change in the title to the physical property placed on the streets by the railway company. I have no doubt at all that the property in the street is the property of the railroad company; and it cannot be taken without due process of law. Exactly how the City should or may proceed to bring about its removal, the officials of the City have doubtless given more thought to than the Court. It is the railroad company's property in the street, and its rights in it can only be affected by resorting to proceedings as dignified and careful as if they were rights of property of a private individual, resting upon his own land.

So, of course, there can be no injunction against the City's proceeding, by lawful method, to exercise the rights that it has in the streets, and against the claim of the railroad company that it has a right to remain there. This is the opinion of this Court.

464 I am very well satisfied that the ordinance is invalid under which The Forest City Railway Company, defendant herein, undertakes to assert rights in the street, both because a renewal cannot be granted to other than the owner of an original grant, and also because this ordinance seeks to take property without due process of

law. It also violates the Constitution of the State of Ohio, if it is to be deemed to be in the nature of an appropriation proceeding, in that it does not provide that the value of the property to be taken should be paid, or secured to be paid, in cash. But I want to look at the argument in that respect, for I have not given the subject connected or serious consideration.

But, as it seems to the Court, the question comes simply to the form of the injunction, and what is to be enjoined. Certainly the City cannot be enjoined from using any implements that it has, and may property use, to exercise its rights in the streets.

I suppose that if The Forest City Railway Company has an ordinance that is invalid, and undertakes, by reason of that ordinance, and by the machinery devised in it, to take possession of the property, the City could not claim that it was *its* method of taking possession of the property. That would be an illegal way of doing so.

The Forest City Railway Company, doubtless, under the language of the bill and answer, and the qualifications put by The Forest City Railway Company upon its claimed right, could be enjoined,—and probably in this case would have to be enjoined,—from interfering with the railroad company, insofar as its interference affected property rights in the property in the streets.

Whether it would be the duty of the Court to declare the ordinance void, as a definitive finality ,if it found that it was void, and
465 for that reason hold that The Forest City Railway Company had no right to interfere with the possession of property in the streets by the complainant, is not so clear. The mere fact that the Court finds, as a predicate to its conclusion, a certain thing, does not, of necessity, justify the Court in doing that which amounts to a judicial determination declaring it void.

I do not know that there is any substance in the distinction, or whether it is important or not. If the Court finds that The Forest City Railway Company has no right to interfere with the property of the complainant, because the claim upon which The Forest City Railway Company bases its right to interfere with it is unfounded in law, and rests upon an invalid ordinance, that is enough; that accomplishes the purpose.

This is not an action for the purpose of declaring an ordinance void—

Judge SANDERS: It certainly is intended to have that effect.

The COURT: I appreciate the accuracy of counsel's observation, and yet do not yield that there is any inaccuracy in my statement. What I mean is that it is not for the purpose of declaring it void, as a general proposition, affecting everybody. It is of no interest to the complainant whether the ordinance is void or valid, except as it affects the rights of the complainant in the streets. It does not bring the action as a citizen, but it prosecutes this action under a right just as high, in that it affects its own property.

For instance, in the case that was brought in the State Court here; that was a proceeding seeking to declare the ordinance void, and that was all. This is not a proceeding of that character.

But the Court does not want to take up as much time as counsel did in making observations.

466 Judge SANDERS: Does the Court desire counsel to submit a form of decree?

The COURT: I think counsel understand what it is that the Court thinks the decree ought to cover. I have not read the prayer of the bill, nor the averments of the answer, in respect to that property; but I suppose that the complainant is entitled to an injunction against The Forest City Railway Company, and it would be entitled to an injunction against the City if there was any claim that the City was undertaking, through the instrumentality of this ordinance, to——

Judge SANDERS: That is submitted in as broad terms as the other.

Mr. WESTENHAVER: We don't agree with that observation.

The COURT: The Court will not agree to a decree that is not fully expressive of what is recognized or bound to be a fact. If it is perfectly apparent, upon the theory that the Court has been proceeding on, that the City is undertaking to interfere with complainant's possession of its own property, through the instrumentality of an illegal ordinance why that is an illegal act, and must be enjoined.

The City has its rights in those streets, which it can simply assert; and so I say that, if that situation appears in the pleadings, then, to that extent, and in that form, the complainant would be entitled to an injunction against the City. But it would not be entitled to any injunction against the City's proceeding to do such acts in Central Avenue and the other streets along which this track is laid as they could do with respect to any other street upon which any other person had a structure, or was maintaining that which was there without authority of law. Its rights are the same there as elsewhere.

467 The Court holds that The Forest City Railway Company has no more rights in the streets than the complainant,—and not as many, because the complainant's property is there; and this property, if removed by the City, must be removed in some way that corresponds with the proprieties of the law.

R. W. TAYLER.

November 18, 1905.

(Endorsements:) 6851. United States Circuit Court, Northern District of Ohio, Eastern Division. The Cleveland Electric Railway Company, Complainant, *v.* The City of Cleveland and The Forest City Railway Company, Defendants. Opinion of the Court. Form of decree. Filed Nov. 18, 1905. Irvin Belford, Clerk, U. S. Circuit Court, N. D. O.

468 (*Decree.*)

October Term, A. D. 1905, towit: December 4th, 1905.

Present: Honorable Robert W. Tayler, U. S. District Judge.

6851. Equity.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND AND THE FOREST CITY RAILWAY COMPANY, Defendants.

Decree.

This cause came on to be heard at this Term, and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

First. That the right of the complainant to maintain and operate its street railroad upon the street railway route described in the ordinance of the City of Cleveland, passed January 11, 1904, and set forth in the Bill, that is to say, "Commencing at the intersection of Prospect and Erie Streets in the City of Cleveland; thence southerly on, over and along Erie Street to Central Avenue; thence easterly, on, over and along Central Avenue to Lincoln Avenue. Also commencing at the intersection of Quincy Street with Willson Avenue in said City; thence easterly, on, over and along Quincy Street to Woodland Hills Avenue; "expired on the twenty-second day of March, 1905.

Second. That said ordinance of the City of Cleveland, passed January 11, 1904, described in said bill of complaint, entitled "An Ordinance granting to The Forest City Railway Company, its successors and assigns, the renewal right to maintain and operate the existing street railroad in the following streets," is inoperative to confer upon the defendant, The Forest City Railway Company, any legal right to take the tracks, poles, wires and appliances erected and maintained by the complainant in and along the aforesaid streets, in this: that said ordinance authorizes the taking of the property of the complainant without due process of law.

469 *Third.* That The Forest City Railway Company, its officers, agents and employees, and each of them, be, and they are hereby, enjoined and prohibited from in any manner taking possession of, or interfering with the complainant in the peaceable possession of, its tracks, poles, wires and other appliances, in use by it in connection with the operation of its railroad upon the streets described in said ordinance of said City of January 11, 1904; and that the City of Cleveland, its officers, agents and employés, and each of them, be, and they are hereby, enjoined and prohibited from in any manner attempting, by virtue of said ordinance, to put the defendant, The Forest Cty Railway Company, into possession of said tracks, poles, wires and other appliances.

Fourth. That the costs in this case be paid, one-half by the complainant, and one-half by the defendant, The Forest City Railway Company.

470 (*Petition for Appeal.*)

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

No. 6851.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND AND THE FOREST CITY RAILWAY COMPANY, Defendants.

Petition for Appeal.

The above named complainant, The Cleveland Electric Railway Company, a corporation, deeming itself aggrieved by the decree made and entered in the above entitled cause on the 4th day of December, A. D. 1905, hereby appeals from said decree to the Supreme Court of the United States for the reasons specified in the assignment of errors hereto annexed and herewith filed, and it prays that this appeal may be allowed and that a transcript of the record and proceedings, and papers, upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States, and that said decree may be reversed.

SQUIRE, SANDERS & DEMPSEY,
Attorneys for The Cleveland Electric Railway Company.

Dated this 30 day of December, 1905.

Assignment of Errors.

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
vs.
THE CITY OF CLEVELAND AND THE FOREST CITY RAILWAY COMPANY, Defendants.

Assignment of Errors.

471 The above named complainant, The Cleveland Electric Railway Company, for assignment of errors in the decree made in the above entitled cause, entered on the 4" day of December, 1905, and from which an appeal to the Supreme Court of the United States has this day been filed, assigns the following:

1. It was error in said circuit court to adjudge and decree that the right of complainant to operate its street railroad upon the street railway route described in the ordinance of the City of Cleveland, passed January 11, 1904, and set forth in the bill, that is to say, commencing at the intersection of Prospect and Erie Streets, in the City of Cleveland, thence southerly on, over and along Erie Street to Central Avenue; thence easterly on, over and along Central Avenue to Lincoln Avenue; also commencing at the intersection of Quincy Street with Willson Avenue in said City, thence easterly on, over and along Quincy Street to Woodland Hills Avenue, expired on the 22nd of March, 1905.

2. It was error in said circuit court to adjudge and decree that the right of complainant to operate its street railway upon the Central Avenue route, in the bill of complaint described, expired on the 22nd day of March, 1905.

3. It was error in said circuit court to refuse to adjudge and decree that the ordinance of January 11, 1904, set forth in the bill of complaint, impaired the contract right of complainant with the City of Cleveland in this, namely, that whereas complainant was by contract authorized to maintain and operate its Central Avenue street railway route until at least July, 1913, said ordinance of January 11, 1904, deprived the complainant of the exercise of such right and undertook to terminate its right of operation of said Central Avenue route on the 22nd day of March, 1905, and was, therefore, null and void.

472 4. It was error in said circuit court to refuse to adjudge and decree the ordinance of January 11, 1904, set forth in the bill of complaint, void, because it was an ordinance purporting to renew to the Forest City Railway Company a grant which at the time of said attempted renewal belonged to the complainant.

5. It was error in said circuit court to refuse to declare said ordinance of January 11, 1904, described in said bill of complaint, void, and in refusing to enjoin both the City of Cleveland and The Forest City Railway Company from taking any action whatever in pursuance of the terms of said void ordinance.

6. It was error in said circuit court to adjudge that one half of the costs should be paid by the complainant.

SQUIRE, SANDERS & DEMPSEY,
Solicitors for Cleveland Electric Railway Company.

(Endorsements on Petition for appeal and assignment of errors:) No. 6851. The Cleveland Electric Railway Company, Plaintiff *vs.* The City of Cleveland, *et al.*, Defendant-. Petition for Appeal. Filed Dec. 30, 1905, Irvin Belford, Clerk U. S. Circuit Court, N. D. O. Squire, Sanders & Dempsey, Cleveland.

(Order Allowing Appeal.)

October Term, A. D. 1905, to-wit: December 30th, 1905.

Present: Honorable Robert W. Tayler, U. S. District Judge.

6851. Chancery.

THE CLEVELAND ELECTRIC RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY.

The above-named complainant, The Cleveland Electric Railway Company, a corporation, desires to appeal to the Supreme
473 Court of the United States from the decree entered in this cause on the 4th day of December, A. D. 1905; and having presented its petition praying for said appeal, accompanied by an assignment of errors on which it relies, and the same having been duly considered by the court,—

It is ordered, adjudged and decreed, that said appeal be allowed to and from said decree.

And it is further ordered that the amount of bond to be given upon said appeal be and the same is hereby fixed at the sum of five hundred dollars, conditioned for the payment by the complainant of the costs in the action in case it does not make good its appeal as provided by law; and that an authenticated transcript of the record and proceedings and papers used and upon which said decree was rendered in this court, be forthwith transmitted, duly certified and verified, to the Supreme Court of the United States, according to the law in such cases made and provided.

Done in open court this 30th day of December, A. D. 1905.

(Bond on Appeal.)

Know all men by these presents, That we, The Cleveland Electric Railway Company, as principal, and Wm. B. Sanders as sureties, are held and firmly bound unto The City of Cleveland and The Forest City Railway Company in the full and just sum of Five hundred dollars to be paid to the said The City of Cleveland and The Forest City Railway Company, their certain attorneys, executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 30″ day of December in the year of our Lord one thousand nine hundred and five.

Whereas, lately at a Circuit Court of the United States
474 for the Northern District of Ohio, Eastern Division in a suit depending in said Court, between The Cleveland Electric Railway Company, Complainant and The City of Cleveland and The Forest City Railway Company, Defendants, a decree was rendered

against the said The Cleveland Electric Railway Company and the said The Cleveland Electric Railway Company having obtained an appeal and filed a copy thereof in the Clerk's office of the said Court to reverse the — in the aforesaid suit and a citation directed to the said The City of Cleveland and The Forest City Electric Railway Company citing and admonishing them to be and appear at a session of the United States Supreme Court on the — day of ——, next.

Now, the condition of the above obligation is such, that if the said The Cleveland Electric Railway Company, shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

THE CLEVELAND ELECTRIC RAILWAY CO.,
[SEAL.]
By SQUIRE, SANDERS & DEMPSEY, *Its Atty's*
[SEAL.]
WM. B. SANDERS.
[SEAL.]

Sealed and Delivered in Presence of

—— ——.

—— ——.

Approved by
R. W. TAYLER, *Judge.*

(Endorsements on Bond on Appeal:) No. 6851. The Cleveland Electric Railway Company *v.* The City of Cleveland and The Forest City Railway Company. Bond on appeal to the United States Supreme Court. Filed Jan. 2, 1906. Irvin Belford, Clerk U. S. Circuit Court, N. D. O.

475 (*Precipe for Transcript.*)

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

No. 6851. In Equity.

THE CLEVELAND ELECTRIC RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY.

To the Clerk:

You are requested to prepare a transcript of record in the above entitled cause to include all record, pleadings, papers, orders and testimony filed therein for filing in the Supreme Court of the United States.

SQUIRE, SANDERS & DEMPSEY,
Attorneys for The Cleveland Electric Ry. Co.

(Endorsements:) No. 6851. United States Circuit Court, Northern District of Ohio, Eastern Division. The Cleveland Electric Railway Company *vs.* The City of Cleveland, and The Forest City Railway Company. Precipe for Transcript of record to U. S. Supreme Court. Filed Jan. 12, 1906. Irvin Belford, Clerk U. S. Circuit Court, N. D. O.

476 UNITED STATES OF AMERICA, *ss:*

To the City of Cleveland and The Forest City Railway Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an order allowing an appeal filed in the Clerk's Office of the Circuit Court of the United States for the Eastern Division of the Northern District of Ohio, wherein The Cleveland Electric Railway Company is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 2nd., day of January, in the year of our Lord one thousand nine hundred and six.

ROBERT W. TAYLER,
United States District Judge Presiding in Circuit Court.

Service of the above citation is hereby acknowledged and appearance of appellees is hereby entered.

NEWTON D. BALLU,
For the City of Cleveland.
THE FOREST CITY RAILWAY COMPANY,
By D. C. WESTENHAVER, *Its Attorney of Record.*

January —, 1906.

477 (*Certificate of Clerk.*)

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

No. 6851. Chancery.

THE CLEVELAND ELECTRIC RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY.

NORTHERN DISTRICT OF OHIO, *ss:*

I, Irvin Belford, Clerk of the Circuit Court of the United States for said District, do hereby certify that the annexed and foregoing pages contain a true and complete copy of the final record and evi-

dence, including the petition for appeal, assignment of errors and all proceedings in said cause; and there is embraced in such record, true copies of the opinions of the Court, the originals of all which remain in my custody as clerk of said court, and there is also attached to and transmitted with said record, the citation issued and allowed herein.

In testimony whereof, I have hereunto signed my name and affixed the Seal of said court, at Cleveland, in said district, on this 20th day of January, A. D. 1906 and in the 130th year of the Independence of the United States of America.

[Seal of the Circuit Court, Northern Dist. of Ohio.]

IRVIN BELFORD, *Clerk,*
By JAMES C. MUNN,
Deputy Clerk.

Endorsed on Cover: File No. 20,083. N. Ohio, C. C. U. S. Term No. 581. The Cleveland Electric Railway Company, appellant, *vs.* The City of Cleveland and The Forest City Railway Company. Filed February 5th, 1906. File No. 20,083.

1 UNITED STATES OF AMERICA,
Northern District of Ohio, Eastern Division, ss:

Record of the proceedings of the Circuit Court of the United States within and for the Eastern Division of the Northern District of Ohio, in the cause and matter hereinafter stated, the same being disposed of at a regular term of said Court begun and held at the City of Cleveland, in said District on the first Tuesday in October, being the third day of said month in the year of our Lord one thousand nine hundred and five, and of the Independence of the United States of America the one hundred and thirtieth; to-wit: on the 4th day of December, A. D. 1905.

Present: The Honorable Robert W. Tayler, United States District Judge.

No. 6851. Chancery.

THE CLEVELAND ELECTRIC RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY.

Said action was commenced on the 21st day of March A. D. 1905, and proceeded to final disposition at the term and day above written. An appeal was taken from the above mentioned decree on December 30th, 1905 to the Supreme Court of the United States by the complainant, and on May 24th, 1906 a cross-appeal is taken by the defendants, in which cross-appeal proceeding the following papers and pleadings were filed and orders of the Court were made and entered in the order and on the dates hereinafter stated, to-wit:

2 (*Petition for Appeal.*)

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

6851.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
v.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendants.

Petition for Appeal.

The above named defendants, the City of Cleveland, and The Forest City Railway Company, deeming themselves aggrieved by the decree made and entered in the above entitled cause on the 4th day of December, 1905, hereby appeals from said decree to the Supreme Court of the United States for the reasons specified in the assignment of errors hereto annexed and herewith filed, and they

pray that this appeal may be allowed and that a transcript of the record of proceedings and papers upon which said decree was made may be sent to the Supreme Court of the United States, and that said decree may be reversed.

THE CITY OF CLEVELAND,
By NEWTON D. BAKER, *City Solicitor.*
THE FOREST CITY RAILWAY COMPANY,
By GARFIELD, HOWE & WESTENHAVER,
Its Attorneys.

Dated this 18th day of May, 1906.

(Endorsements:) No. 6851. U. S. Cir. C't North. Dist. of Ohio, Eastern Division. The Cleveland Electric Railway Company, Plaintiff *v.* The City of Cleveland and The Forest City Railway Company, Defendants. Petition for Appeal. Filed May 24, 1906. Irvin Belford, Clerk U. S. Circuit Court, N. D. O. Garfield, Howe & Westenhaver, Cleveland, O., Attorneys for Defendants.

3 (*Assignment of Errors.*)

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

6851.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, Complainant,
v.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, Defendant-.

Assignment of Errors.

The above named defendants, the City of Cleveland and The Forest City Railway Company, for assignment of errors in the decree rendered in the above entitled cause on the 4th day of December, 1905, from which an appeal to the Supreme Court of the United States has this day been filed assigns the following:

I. It was error in said Circuit Court to adjudge, order and decree that the ordinance of the City of Cleveland passed January 11, 1904, described in the bill of complaint, and entitled, "An Ordinance granting to The Forest City Railway Company, its successors and assigns the renewal right to maintain and operate the existing street railroad in the following streets, etc." was inoperative to confer upon said The Forest City Railway Company any legal right to take the tracks, poles, wires and appliances erected and maintained by the complainant in said streets.

II. It was error in said Circuit Court to adjudge, order and decree that said ordinance was inoperative because the same attempted to authorize the taking of any property of the complainant without due process of law.

III. It was error in said Court to enjoin and prohibit The Forest City Railway Company from taking possession of or interfering in any manner with the peaceable possession of the tracks, poles,
4 wires and other appliances used by the complainant in connection with the operation of its railroad upon the streets described in said ordinance of the City of Cleveland passed on the 11 day of January, 1904.

IV. It was error in said Circuit Court to enjoin and prohibit the City of Cleveland, its officers, agents and employees and any of them from attempting in any manner by virtue of said ordinance to put the defendant, The Forest City Railway Company, into possession of said tracks, poles, wires and other appliances.

V. It was error in said Court not to have dismissed the complainant's bill at the hearing thereof at the costs of the complainant.

Given under our hands this 18 day of May, A. D. 1906.

THE CITY OF CLEVELAND,
By NEWTON D. BAKER, *City Solicitor.*
THE FOREST CITY RAILWAY COMPANY,
By GARFIELD, HOWE & WESTENHAVER,
Its Attorneys.

(Endorsements:) Filed May 24, 1906. Irvin Belford, Clerk U. S. Circuit Court, N. D. O.

5 (*Order Allowing Appeal.*)

April Term, A. D. 1906, to-wit: May 24, 1906.

Present: Honorable Robert W. Tayler, U. S. District Judge.

6851. Chancery.

THE CLEVELAND ELECTRIC RAILWAY COMPANY
v.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY.

The above named defendants, the City of Cleveland and The Forest City Railway Company having this 24 day of May, 1906, presented their petition in open court praying an appeal to the Supreme Court of the United States from the decree made and entered in this cause on the 4th day of December 1905, accompanied by an assignment of errors on which they rely, and the same having been duly considered by the Court,

It is Adjudged, Ordered and Decreed that said appeal be allowed to and from said decree to the Supreme Court of the United States.

And it is Further Ordered that the amount of the bond to be given upon said appeal be and the same is hereby fixed at the sum of Five Hundred Dollars. ($500.00) conditioned for the payment by the said defendants of the costs in case they do not make good their appeal as provided by law, and that an authenticated transcript of

the record and proceedings upon which said decree was entered in this court be forthwith transmitted duly certified and verified to the Supreme Court of the United States according to law in such cases made and provided.

TAYLER, *Judge.*

6 (*Appeal Bond.*)

Know all men by these presents: That the City of Cleveland, a municipal corporation under the laws of the State of Ohio, and The Forest City Railway Company, a corporation as principals, and Carl H. Nau and M. A. Fanning, as sureties, are held and firmly bound unto The Cleveland Electric Railway Company in the just and full sum of Five Hundred Dollars ($500.00) to be paid to the said The Cleveland Electric Railway Company, its successors and assigns, for which payment well and truly to be made, each of the principals bind themselves, their successors and assigns, and each of said sureties bind themselves, their heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 19th day of May, A. D. 1906.

The condition of the above obligation is such that, whereas, lately at a term of the Circuit Court of the United States, for the Northern District of Ohio, Eastern Division, in a suit therein pending in which The Cleveland Electric Railway Company was complainant and the City of Cleveland and The Forest City Railway Company were defendants, a decree was rendered on the 4th day of December, 1905, and the said the City of Cleveland, and The Forest City Railway Company having obtained an appeal from said decree to the Supreme Court of the United States.

Now, if the said the City of Cleveland and The Forest City Railway Company shall prosecute their appeal, and shall pay all damages and costs that may be sustained or awarded against them in the event they fail to make such appeal good, then the above obligation to be void, else to remain in full force and virtue.

[SEAL.] THE CITY OF CLEVELAND,
By TOM L. JOHNSON, *Mayor.*
[SEAL.] THE FOREST CITY RAILWAY COMPANY,
By M. A. FANNING, *President.*
M. A. FANNING. [SEAL.]
CARL H. NAU. [SEAL.]

Approved:
TAYLER, *J.*

7 (Endorsements on Appeal Bond:) 6851. The Cleveland Elec. Ry. Co. *vs.* The City of Cleveland, *et al.* Bond. Filed May 24, 1906. Irvin Belford, Clerk, U. S. Circuit Court, N. D. O.

8 UNITED STATES OF AMERICA, *ss:*

To The Cleveland Electric Railway Company, or Squire, Sanders and Dempsey, their attorneys, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal filed in the Clerk's Office of the United States Circuit Court, for the Northern District of Ohio, Eastern Division, wherein The City of Cleveland and The Forest City Railway Company are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States this 24th day of May, in the year of our Lord one thousand nine hundred and six.

R. W. TAYLER,
United States District Judge,
Presiding in the Circuit Court.

Service of the above citation is hereby acknowledged and appearance of appellee is hereby entered.

SQUIRE, SANDERS & DEMPSEY,
Attorneys for the Cleveland Electric Ry. Co.

May 24th 1906.

9 (*Certificate of Clerk.*)

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

No. 6726. Chancery.

THE CLEVELAND ELECTRIC RAILWAY COMPANY
vs.
THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY.

NORTHERN DISTRICT OF OHIO, *ss:*

I, Irvin Belford, Clerk of the Circuit Court of the United States for the said District, do hereby certify that the annexed and foregoing pages contain a full and true copy of the petition for appeal, assignment of errors and all proceedings in the matter of the cross appeal mentioned in the caption hereof, the originals of all which remain in my custody as clerk of said Court. There is also attached to, and transmitted with said record, the citation issued and allowed herein.

In testimony whereof, I have hereunto signed my name officially and affixed the seal of the said court, at Cleveland, in said district

this 4th day of June, A. D. 1906, and in the 130th year of the Independence of the United States of America.

[Seal of the Circuit Court, Northern Dist. of Ohio.]

IRVIN BELFORD, *Clerk*,
By B. C. MILLER,
Deputy Clerk.

Endorsed on cover: File Nos. 20,083 and 20,286. N. Ohio C. C. U. S. Term No. 197. The Cleveland Electric Railway Company, appellant, *vs.* The City of Cleveland and The Forest City Railway Company. Filed February 5, 1906. File No. 20,286. Term No. 321. The City of Cleveland and The Forest City Railway Company, appellants, *vs.* The Cleveland Electric Railway Company. Filed June 14, 1906. File Nos. 20,083 and 20,286.

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JAMES H. McKEN

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906

No. 197.

THE CLEVELAND ELECTRIC RAILWAY COMPANY,
APPELLANT,

vs.

THE CITY OF CLEVELAND ET AL.,
APPELLEES.

SUPPLEMENT TO RECORD.

STIPULATION MAKING CERTAIN ORDINANCES PART OF THE RECORD AND ORDINANCES.

THE BROOKS COMPANY, CLEVELAND, OHIO, 9060

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 197.

The Cleveland Electric Railway Company,
Appellant,
vs.
The City of Cleveland and The Forest City Railway Company,
Appellees.

STIPULATION

This cause was tried under an arrangement between counsel, sanctioned by the Court, that either party might incorporate into the record such ordinances as were referred to either in the pleadings or by counsel, or were deemed material to the controversy. When the record was made up and printed certain ordinances were omitted.

It is therefore stipulated that the copies of ordinances printed by The Cleveland Electric Railway Company, being the ordinances making the grants in force as respects The Broadway & Newburgh Street Railroad Company, The South Side Street Railroad Company, and The Brooklyn Street Railroad Company, at the time of the consolidation forming the complainant on the 29th of May, 1893, referred to in the Record in this cause at page 230.

2. And also an ordinance granting to The Cleveland Electric Railway Company the right of extension from Carabelli Street to the easterly limits of the city, passed October 21st, 1895, and

3. Ordinance granting to The Cleveland Electric Railway Company the right to extend across Deering, Stearns and Fairfield Streets, with suitable connections at Euclid Avenue and Cedar Avenue, passed September 21, 1896, and

4. Ordinance granting The Broadway & Newburgh Street Railroad Company the right to extend along Miles Avenue to the easterly limits of the City, passed October 21, 1889, and

5. Ordinance granting The Broadway & Newburgh Street Railroad Company the right to extend in Broadway and Liberal Street to connect in Humboldt Street, passed July 21, 1890.

Which ordinances and each of them were duly accepted by the respective companies, and shall constitute a part of the record as fully as if contained in the transcript as certified by the Clerk of the Circuit Court.

It is further stipulated that the ordinances printed by the City of Cleveland, as additional to the record, shall likewise constitute a part of the record as fully as if contained in the transcript as certified by the Clerk of the Circuit Court, said ordinances being—

1. An ordinance to grant the St. Clair Street Railroad Company an extension of its charter for a term of twenty-five (25) years. Passed January 5th, 1885.

2. An ordinance to grant to the Superior Street Railroad Company an extension of its charter for a term of twenty-five (25) years. Passed January 26th, 1885.

3. An ordinance to fix the terms and conditions for the consolidation of the West Side Street Railroad Company and the Woodland Avenue Railway Company. Passed February 16th, 1885.

4. The electricity ordinance for the Woodland Avenue and West Side Street Railroad Company. Passed March 22nd, 1889.

5. The Cleveland City Cable Company's extension ordinance in Hough Avenue. Passed June 22nd, 1891.

6. The resolution of Mr. O'Brien, adopted March 27th, 1893.

7. The certificate of Peter Witt, City Clerk, as to the legislation pending at the time of the adoption of the O'Brien resolution.

8. The Cleveland City Railway Company's extension ordinance in Erie Street. Passed July 3rd, 1893.

9. The Cleveland City Railway Company's extension ordinance in Ansel Avenue. Passed March 12th, 1894.

10. The Cleveland Electric Railway Company's extension ordinance in Broadway. Passed August 19th, 1895.

11. The Cleveland Electric Railway Company's extension ordinance in Burton Street and Rhodes Avenue. Passed April 12th, 1897.

12. The Cleveland Electric Railway Company's extension ordinance in Euclid Avenue. Passed May 14th, 1900.

13. The Cleveland City Railway Company's extension ordinance in Ansel Avenue. Passed November 12th, 1900.

14. The Cleveland Electric Railway Company's extension ordinance in Fremont Street. Passed March 25th, 1901.

15. The Cleveland City Railway Company's extension ordinance in Woodland Hills Avenue. Passed April 2nd, 1901.

16. The Cleveland City Railway Company's extension ordinance in Lake Avenue. Passed April 2nd, 1901.

17. The Cleveland Electric Railway Company's extension ordinance in Bank Street. Passed June 24th, 1901.

18. The Cleveland Electric Railway Company's extension ordinance in Michigan Street. Passed July 1st, 1901.

19. The Cleveland Electric Railway Company's extension ordinance in the Public Square. Passed August 5th, 1901.

20. The Cleveland Electric Railway Company's extension ordinance in Bolivar Street. Passed January 13th, 1902.

21. The Cleveland Electric Railway Company's extension ordinance in Erie Street. Passed June 23rd, 1902.

22. The record in the case of the State of Ohio versus The East Cleveland Railroad Company.

The stipulations hereby made, admitting the above named ordinances and papers to be a part of the record, admits the correctness of the papers and their passage at the time stated, and their acceptance, but does not admit the relevancy or the materiality of the ordinances, resolutions or records, the stipulation being without prejudice to the right of either party to object to such papers on the ground of irrelevancy or immateriality.

It is also stipulated that the ordinance of February 9th, 1885, record page 211, as printed, omits the following language beginning in the ninth line thereof after the words "main line", the language so omitted being as follows: "and terminating with the grant for the main line." And that the record may be corrected accordingly by interlineation.

WM. B. SANDERS.
Of Counsel for Appellant.
NEWTON D. BAKER, and
D. C. WESTENHAVER,
Counsel for Appellees.

ORDINANCE No. 846.

AN ORDINANCE granting the Broadway & Newburgh Street Railroad Company the right to use electricity in operating its street railroad.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That the Broadway & Newburgh Street Railroad Company is granted permission to operate its entire line of street railroad, as the same now exists, with any and all extensions that may hereafter be granted thereto, by electricity as a motive power, using such electric plant in the public streets as shall be acceptable to the Board of Improvements, and for such purposes said company shall have the right to erect and maintain poles, wires, fixtures or conduits, and all

other appliances or appurtenances that, in the opinion of said Board of Improvements, shall be found necessary to successfully operate its street railroad by electricity, and said entire line shall be operated with electricity within twelve months after the passage of this ordinance.

SECTION 2. In the erection of poles and placing of wires or conduits, and in the use of any and all other appliances or appurtenances that may be found necessary to operate its line by electricity, and before the improvement shall be made upon any or all of its lines for the purpose of using electricity, a plan of the same, showing all poles, wires, and other appliances or appurtenances that said company shall desire to use, shall be submitted to and approved by the board of improvements, said board having the right to fix the distance at which poles shall be apart, the height of all poles and wires, and the size and location of all conduits, and to regulate the places within the streets where any and all appliances or appurtenances shall be located, and to establish such regulations with reference to the public safety, protection, painting and sightliness of the poles and appurtenances, as said board of improvements shall determine.

SECTION 3. The running of cars on any part of the lines of such company may be suspended by the board of improvements for such reasonable time as may at any time be necessary on account of paving, repaving, construction or repairs of streets or sewers, or other public improvements, and whenever it may be necessary to have any track taken up for the purposes aforesaid, the same shall be taken up and relaid at the expense of said railroad company whenever required by said Board.

SECTION 4. Said railroad company shall at all times hereafter, defend, keep harmless, and indemnify the city of Cleveland from any and all damages, lawful claims, and demands for injuries to persons or property, costs and expenses to which said city may be subjected, or made liable by any proceeding at law or in equity, or otherwise growing out of the

grant of the privileges in this ordinance granted, or out of the exercise of the same by said company.

SECTION 5. Said company shall, at all times, conform to such rules and regulations as may from time to time be made by the Council and approved by the Board of Improvements as to the rate of speed it may run its cars, and while the cars of said company are in motion or about to start, warning shall be given by bell or otherwise to notify persons of any immediate or approaching danger.

SECTION 6. That the city reserves to itself the right to grant to any other person or persons, company or corporation, a joint use for street railroad purposes of the tracks, poles, wires, electric currents, and other appliances herein provided for upon that portion of Ontario street lying north of the southerly line of Factory street, through or around Monumental Park and in Superior street west of Ontario street as is free territory under existing grants, upon such terms and conditions as to occupation and compensation as the City Council may deem just and reasonable, in case such companies should fail to come to such agreement by and between themselves.

SECTION 7. *The grant herein made shall terminate twenty-five* (25) *years from and after the passage of this ordinance*, and said company shall have the right to maintain and operate its present line and any and all extensions in the manner herein prescribed until the expiration of said period.

SECTION 8. Nothing contained in this ordinance shall in any wise release or relieve said company from compliance with all other ordinances relating to street railroads now in force or which may hereafter be adopted by the City Council, including all amendments hereto and thereto.

SECTION 9. Said railroad company shall, in writing, within thirty days after the passage of this ordinance, accept the permission and privilege hereby granted and agree to comply therewith.

SECTION 10. This ordinance shall take effect and be in force from and after its passage and legal publication and the

payment to the City Auditor by said company of the expense of publication.

Passed July 1, 1889.

F. O. SPENCER,
President of the Council.

H. H. BURGESS,
City Clerk.

No. 1026.

AN ORDINANCE granting permission to the Broadway & Newburgh Street Railroad Company to extend its line of double track street railroad on and along Miles avenue, from Broadway to the easterly limits of the city.

SECTION 1. Be it ordained by the city Council of the city of Cleveland, That the Broadway & Newburg Street Railroad Company be and it is hereby granted permission to extend its double track street railroad and construct, maintain and operate the same on and along Miles avenue, from Broadway to the easterly limits of the city.

SECTION 2. Said Broadway & Newburgh Street Railroad Company shall pave between the outer rails of its said tracks including the "devil strip" at the same time that said tracks are laid under the direction and to the acceptance of the Board of Improvements and with such material as said Board may direct.

SECTION 3. Said company shall begin laying the track herein authorized, within six (6) months from the date of passage of this ordinance, and shall have the same completed within twelve (12) months thereafter.

SECTION 4. No additional fare shall be charged any passenger between any points on the main line of said company and this extension.

SECTION 5. *This grant shall expire with the grant of said company for its main line and extensions as made July* 1, 1889, *to wit: July* 1, 1914, and be subject to all the terms, conditions, limitations and obligations imposed on said company

by the general street railroad ordinance of the city and the said ordinance of July 1, 1889, and all amendments thereto and hereto.

SECTION 6. Said company shall file with the City Clerk within thirty (30) days after the passage of this ordinance, a written acceptance of the same, and such acceptance shall be deemed an agreement to perform all and singular the conditions and requirements of this ordinance, otherwise this ordinance shall be null and void.

SECTION 7. This ordinance shall be in force from and after its passage and legal publication and payment to the City Auditor of the cost of such publication.

Passed October 21, 1889.

F. O. SPENCER,
President of the Council.

H. H. BURGESS,
City Clerk.

AN ORDINANCE to grant the Broadway & Newburg Street Railroad Company the right to extend and operate its line of double track street railroad now in Broadway at Liberal street, thence in and along Pittsburg street and Kingsbury Run Viaduct Extension (so-called) to, and connect with, said company's tracks now in Humboldt street.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That the Broadway & Newburg Street Railroad Company be and is hereby granted permission to extend its double track street railroad and construct, maintain and operate the same from its present tracks in Broadway at Liberal street, in and along Pittsburg street and Kingsbury Run Viaduct Extension (so-called) to and connect with said company's tracks in Humboldt street.

SECTION 2. Said company shall relay at its own cost, the stone pavement now in said Pittsburg street in the space fourteen (14) feet wide to be occupied by said company's

tracks and such additional pavement outside of its tracks as in the opinion of the City Civil Engineer may be deemed necessary, the work to be done under the direction and to the satisfaction of the Board of Improvements. Said company shall also take up and reset the present curb back three feet on each side from its present location and shall grade and pave said three foot spaces with the best quality of common Medina stone, laid dry, and shall pay all expenses incident to and occasioned by said widening as required by the Board of Improvements. Said comany shall within thirty (30) days refund to the abutting property owners in said Pittsburg street, the original first cost, as determined by the City Civil Engineer, of the grading and paving of the space fourteen feet wide to be occupied by said company's tracks.

SECTION 3. Said company shall pave its tracks and the space between its tracks in Kingsbury Run Viaduct Extension (so-called) with the best quality of common Medina stone, laid dry, except such part of said Kingsbury Run Viaduct Extension (so-called) as now remains a wooden trestle. When said trestle shall be removed and said part of said Kingsbury Run Viaduct Extension (so-called) as is now said trestle shall be filled and brought to the established grade, then said company shall pave its tracks and the space between its tracks in said part of said Kingsbury Run Viaduct Extension (so-called) with the best quality of common Medina stone, laid dry, or such other pavement as the Board of Improvements may direct. And said company shall pay to the city annually such portion of the cost of maintaining said trestle as shall be deemed just and equitable by the Board of Improvements, and said company shall repair said Kingsbury Run Bridge Extension (so-called) in such manner as to fit the same for use by said railroad by rebracing and strengthening the trestle work thereof, and shall hold the city of Cleveland free and harmless from all damages resulting from such repairs, rebracing or occupation or use of said bridge for said purpose by said company. The city reserves the right to grant to other street railway com-

panies the right to use and operate jointly the tracks and electrical plant on said Kingsbury Run Bridge or Extension upon just and equitable terms.

SECTION 4. Said company shall begin laying the track herein authorized within six months from the date of passage of this ordinance and shall have the same completed within twelve months thereafter.

SECTION 5. No additional fare shall be charged any passenger between any points on the main line of said company and this extension, and cars shall be run over said extension at intervals not exceeding fifteen minutes each way from the time of first running cars thereon and all cars shall run around the "St. Clair loop" so-called.

SECTION 6. *This grant shall expire with the grant of said company for its main line and extensions, as made July 1st, 1889, to wit: July* 1, 1914, and be subject to all the terms, conditions, limitations and obligations imposed on said company by the general street railroad ordinances of the city, and the said ordinance of July 1, 1889, and all amendments thereto and hereto.

SECTION 7. Said company shall file with the City Clerk within thirty (30) days after the passage of this ordinance a written acceptance of the same, and such an acceptance shall be deemed an agreement to perform all and singular the conditions and requirements of this ordinance, otherwise this ordinance shall be null and void.

SECTION 8. This ordinance shall be in force from and after its passage and legal publication and payment to the City Comptroller of the costs of such publication.

Passed July 21, 1890.

F. O. SPENCER,
President of the Council.

H. H. BURGESS,
City Clerk.

ORDINANCE No. 246.

AN ORDINANCE to grant to the Brooklyn Street Railroad Company an extension of its charter for a term of twenty-five years.

SECTION 1. Be it ordained by the City Council of the City of Cleveland, That the Brooklyn Street Railroad Company, its successors and assigns, be and the same are hereby authorized to maintain and operate its double track street railway with the necessary switches, turn-tables and turn-outs, commencing in Pearl street at the city limits, thence along and through Pearl street to the viaduct; thence along and over the viaduct to Superior street; thence along and through Superior street to Monumental Park; thence around the southwest corner of Monumental Park to Ontario street; thence along and through Ontario street to Ohio street; thence along and through Ohio street to Erie street; thence along and through Erie to Parkman street; thence along and through Parkman street to Brownell street; thence along and through Brownell street to Scovill avenue; thence along and through Scovill avenue to Cemetery street; also from the Cleveland, Columbus, Cincinnati & Indianapolis Railroad track on Clark avenue, along and through Clark avenue to Pearl street; and from Scovill avenue on Willson avenue along and through Willson avenue to Broadway, subject to the following conditions and limitations, to wit: Provided, that if at any time the Council shall require said company to run through Monumental Park to Ontario street and thence along Ontario street instead of around the west and south sides of said park, then said company shall comply with such regulation, and if in the judgment of the city it be necessary for the accommodation of the public in so changing the route around the park to construct an additional track, switches or turn-outs at any point on the line herein named, then said company shall construct said track, switches and turn-outs. And the city reserves the right to compel joint use, with any other companies, of any track constructed by said company between any point north of the junc-

tion of Broadway and Ontario street and the corner of Lorain and Pearl streets. Provided, that nothing herein contained shall in any way interfere with the terms of any lease now in force between other companies and the Brooklyn Street Railroad Company. And that the said Brooklyn Street Railroad Company shall pay to the city for the use of tracks on the viaduct the sum of three hundred dollars ($300) per annum, the same to be paid quarterly, when due, from the passage of this ordinance.

SECTION 2. All tracks hereafter laid by said company to be standard gauge and the rail of the same pattern now laid and used on said railway, or that may hereafter be found necessary and consented to by the City Council, with suitable gutters at all necessary points so as to permit the free flow of water under the same and on such grades as are now or may hereafter be established by the City Council and subject at all times to be taken up and relaid whenever deemed necessary by the City Council.

SECTION 3. Whenever the city shall deem it necessary to grade, regrade, pave or repave any streets wherein said tracks are laid, the company shall be required to pave or pay to the city the cost of same, at such time and in such manner as the Board of Improvements may direct (at the city's option), any part or all the track between the rails used by them with such pavement as the Council and Board of Improvements may deem proper, unless in the judgment of the Council and Board of Improvements, pavement laid prior to such grading or regrading, paving or repaving, shall be in sufficient good condition and grade. And said company is also required to keep such pavement in constant good order, said paving and repaving to be done under the direction of and to the acceptance of the Board of Improvements.

SECTION 4. Said company shall place and continue on said railway good cars, with all modern improvements, for the convenience and comfort of passengers and shall run cars thereon as public convenience may, in the judgment of the City

Council require under such directions as the City Council may from time to time prescribe.

SECTION 5. Said company shall not charge more than five cents each way for one passenger on the whole or any part herein renewed, but said company may charge a reasonable compensation for carrying packages. And for the convenience of its patrons the company shall at all times keep tickets for sale on the cars by the conductors at the rate of twenty-two (22) for one dollar ($1) or eleven (11) tickets for fifty cents (50c).

SECTION 6. It is understood and agreed that the City of Cleveland shall not be held liable to said company for any damage resulting from the breakage of any sewer or water pipe or for any delay that may be caused by the construction of sewers, the laying of water or gas pipes or the necessary repairing of the same, or for any delay or damage that may be caused by fire or otherwise; all rights vested in the City Council, the Trustees of Water Works or Gas Company, in respect to the care and improvements of streets, the construction of sewers, culverts or drains, and the laying of water and gas pipes therein, are in no way to be impaired or affected by the privileges hereby granted to said company, but the rights and privileges granted to said company, by virtue of this ordinance shall be subject thereto, and said company shall be liable for any loss or injury that any person may sustain by reason of any carelessness, neglect or misconduct of their agents or servants in the management, construction or use of said railway. And said company shall indemnify and hold the city harmless from any damage that may be claimed by property holders or by any person or persons on account of the laying of the track, or in the use, or by reason thereof, or by running the cars thereon.

SECTION 7. Said company shall be required to pay to the City of Clevelaid an annual license of ten dollars for each car used on this railway.

SECTION 8. The authority and privileges in this ordinance named and provided for are to be and remain in force for the full period of twenty-five years from the date of the passage of this ordinance, the said company, its successors and assigns performing the several conditions by this ordinance required.

SECTION 9. That in case of failure by neglect or otherwise on the part of said Brooklyn Street Railroad Company, its successors or assigns, to perform all and singular the conditions of this ordinance or amendments hereto, together with all and singular the general ordinances of the city now or hereafter in force or amendments hereto, the privilege hereby granted and renewed shall become void and of no effect and shall cease upon the adoption of an ordinance of the Council to that effect.

SECTION 10. This ordinance shall take effect and be in force from and after its passage and legal publication and filing by said company with the City Clerk of a written acceptance of the terms and conditions thereof and paying to the city the cost of printing the same.

Passed January 26, 1885.

Expires January 26, 1910.

AN ORDINANCE granting the South Side Street Railroad Company the right to construct, maintain and operate an electric street railway from center of Holmden avenue, on Jennings avenue, through Jennings avenue to Central Viaduct and over viaduct to Central market house and other streets in the city of Cleveland herein specified.

SECTION 1. Be it ordained by the city council of the city of Cleveland, that,

WHEREAS, the South Side Street Railroad Company, operating a street railway under and by virtue of certain ordinances of the city upon Jennings avenue, Professor and Fairfield streets, Scranton avenue and Seneca street, in said city, has by a communication to the common council, of date August 20,

1888, signified its willingness and desire to change the motive power upon said Jennings avenue line and branch lines and operate its cars thereover and over certain extensions therefrom; and

WHEREAS, there is a desire on the part of the people residing on the South Side for a more convenient and rapid mode of transit and that an electric system be substituted for animal power for the movement of cars; therefore the South Side Street Railroad Company is hereby granted permission to erect and maintain poles of such material and design as shall be approved by the board of improvements and the city civil engineer and place wires and the necessary appliances and fixtures thereon for conducting currents of electricity, for the purpose of transmitting and producing motive power and propel and operate its cars upon the following named streets in said city, to wit: Jennings avenue, from the center of Holmden avenue to Central viaduct; thence by the city tracks on Central viaduct to a connection with the Brooklyn Street Railroad Company's tracks at the corner of Ohio and Central place, building at said company's sole expense the tracks necessary to make the connection between the tracks of the Brooklyn Street Railroad Company and the city's tracks, which shall be free territory as hereinafter specified; thence in Central place by the tracks of the said last named company to the connection of said tracks with the tracks of the Woodland Avenue and West Side and the Broadway and Newburg Street Railroad companies, opposite the Central market house, and an extension along Fairfield and Professor streets. The erection of such poles, and a line of poles from Pearl street to Jennings avenue, and the placing of wires thereon, shall be under the supervision and subject to the control of the board of improvements and city civil engineer. Such poles shall not be less than twenty-five feet in height above the ground, and shall not be over eight inches in diameter at the base, unless otherwise approved by the board of improvements, shall be painted and repainted by such company from time to time, and in such

color as the board of improvements or the city civil engineer may direct. They shall be set one hundred and twenty-five (125) feet apart on each side of the street, except when otherwise expressly permitted in writing by the city civil engineer; such poles shall be placed at such points near the curbstone of streets and side lines of Central viaduct as shall be designated by the city civil engineer. Should it become necessary in the prosecution of any work authorized by the city, that such poles or wires should be temporarily removed or placed in new location, such removal shall be made by said company when directed by the board of improvements, and such poles shall be taken up and reset at the cost of said company without any claim of damage therefor on the part of said company. Said company shall use such precautions for safety, from time to time, as the board of improvements may direct or require.

SECTION 2. The running of cars on any part of the lines of the South Side Street Railroad Company may be suspended by the board of improvements and without cost to the city for such reasonable time as may at any time be necessary on account of the repairs of streets, bridges, sewers or other public improvements; and whenever it may be necessary to have any tracks taken up, poles and wires removed for the purpose aforesaid the same shall be taken up and replaced at the expense of said railroad company.

SECTION 3. Said railroad company shall at all times hereafter defend, keep harmless and indemnify the city of Cleveland of and from all damages, lawful claims and demands for injuries to persons or property, cost and expense to which the city may be subjected or made liable by any proceedings at law or in equity or otherwise, growing out of the grant of privileges in this ordinance granted, or out of the exercise or enjoyment of the same by said company.

SECTION 4. Said company shall at all times conform to such rules and regulations as may from time to time be made by the council and approved by the board of improvements as

to the rate of speed at which it may run its cars on the streets heretofore designated; and while the cars of said company are in motion or about to start a bell shall be sounded at such times as may be necessary to warn persons of danger and shall further provide each car with a headlight during hours of darkness.

SECTION 5. The said permission herein given is upon the condition that this grant shall be exercised as far south as Holmden avenue on Jennings avenue within three months of suitable weather for outside work, after notice from the city civil engineer of the completion of the Central viaduct; and it is also granted with all privileges and subject to all the conditions of this ordinance and of the several ordinances by which the South Side Street Railroad Company is permitted to lay rails and operate cars thereon in the streets of the city of Cleveland, so far as not inconsistent herewith and to the general ordinance governing street railroads in the city of Cleveland and all the ordinances in amendment thereof and in addition thereto.

SECTION 6. The privilege of constructing the electric system and the operation of its lines, as hereinbefore provided, is granted in consideration of the improved facilities hereby contemplated and the large expenditure necessary to secure the same and shall be in force for a period of twenty-five years from and after the date of the passage of this ordinance upon the lines herein specified; but nothing herein shall be construed so as to authorize any increase of present fares of 5 cents for transportation over any portion of said company's lines. Said company shall at all times keep on sale with its conductors on its cars, tickets at the rate of twenty-two for $1 or eleven for 50 cents and shall give to each passenger the privilege of transferring to any of the lines of the South Side Street Railroad Company, or the Brooklyn Street Railroad Company, whenever such lines intersect or coincide, so as to permit said passenger, for one fare of 5 cents, to have a continuous ride

over this line and the intersecting lines of this company or the Brooklyn Street Railroad Company.

SECTION 7. The consent and agreement of the Brooklyn Street Railroad Company, having been filed with the common council, to the use of its tracks in Central place as herein contemplated by the South Side Street Railroad Company, said agreement is hereby approved and confirmed. The said South Side Street Railroad Company's tracks between the south end of Central viaduct and the south line of Willey street and the connection between the city's tracks on or near Ohio street, and the tracks of the Brooklyn Street Railroad Company, shall be free territory, and subject to use together with trolley wires and poles, by other companies, on such terms of compensation for the use as the council shall fix, if the parties cannot agree thereon; and no other part of the tracks of said South Side Street Railroad Company shall be free territory. The South Side Street Railroad Company binds itself and its assigns that it or its assigns shall on Jennings avenue between Central viaduct and Holmden avenue at once pave the spaces between its rails, and the space between its tracks known as the "devil strip," with the best quality of firebrick pavement. Asphalt cement filling to be used between joints when same is used on balance of street, when the same is paved, and shall further pay to the city, at such times as the board of improvements may require or order, the cost of paving a strip three feet wide on each side of its tracks of whatever kind of material the balance of said Jennings avenue shall be paved with, when the common council shall order said avenue or any part thereof to be paved, and maintain its tracks, and pavement within its track, and the "devil strip" between its tracks in thorough repair to the satisfaction of the board of improvements.

SECTION 8. The South Side Street Railroad Company shall pay to the city of Cleveland for the use of the Central viaduct, between Jennings avenue and Hill street, and the city's tracks on the same, and the approaches, annually the sum of fifteen hundred dollars during the term of this grant, pay-

able quarterly in advance, excepting the first two (2) years the compensation shall be one thousand ($1,000) dollars per year, which amount is to be placed to the credit of the bridge fund, and also to keep in repair, to the satisfaction of the board of improvements, the city's tracks on the Central viaduct and approaches and the pavements within the said two tracks.

SECTION 9. Said company shall in writing accept the permission and privileges hereby granted and agree to comply with, adopt and abide by all the provisions, conditions and restrictions upon which the same are granted within thirty days after the passage of this ordinance, and shall within said time file the said writing with the city clerk; otherwise this ordinance shall be null and void; such acceptance shall be deemed an agreement of said railroad company with the city to perform all and singular all matters and things required of said company to be performed under this ordinance, and if said company shall fail to do and perform any of the requirements of this ordinance or the general ordinance governing street railroads when required by the board of improvements, the board of improvements for and in behalf of said city may cause the same to be done and charge the expense thereof to said company.

SECTION 10. Within two years, or sooner, if the board of improvements shall so require, said company shall use the same system as herein provided on the entire length of its line or lines, as herein specified, and on the Fairfield and Professor street branch, and extended down Ontario to Superior street, down Superior street to Bank street, Bank street to Lake street, Lake street to Water street, Water street to Superior, Superior street to Ontario, and Ontario street to the point of connection at the Central market house, upon necessary consent for use of tracks being obtained.

SECTION 11. This ordinance shall take effect and be in force from and after its passage and legal publication, and the

payment to the city auditor, by said company of the expense of such publication.

Passed October 5, 1888.

Expires October 5, 1913.

No. 866o.

AN ORDINANCE granting permission to the Cleveland Electric Railway Company, its successors and assigns, to extend its double track street railroad, from the junction of Carabelli street and Euclid avenue, easterly to the easterly limits of the city of Cleveland.

SECTION 1. Be it ordained by the City Council of the city of Cleveland, That the Cleveland Electric Railway Company, its successors and assigns, be, and they are hereby granted permission to extend their line of railroad, and to construct, maintain, and operate a double track street railroad, with the necessary poles, wires, and other electrical appliances, in and along Euclid avenue, from the present tracks of said company at the junction of Carabelli street with said Euclid avenue, easterly to the easterly limits of the city of Cleveland.

SECTION 2. Said the Cleveland Electric Railway Company, shall grade, improve, and pave with dressed block Medina stone, with concrete filling, a strip sixteen feet in width in Euclid avenue, from Carabelli street easterly to the present easterly limits of the city of Cleveland, and maintain the same in good condition and to the acceptance of the Board of Control, and no additional fare shall be charged by said company by reason of this extension.

SECTION 3. *This grant shall expire July* 1, 1914.

SECTION 4. The rights and privileges herein granted shall be subject to the provisions of the general street railroad ordinances, so far as the same may be applicable and not inconsistent herewith, and such further and future reg-

ulations as may be ordered by the Council; and subject also to the provisions of the special ordinances under which the East Cleveland Railroad Company was authorized to construct and operate its road to its present terminus at Carabelli street.

SECTION 5. Said company shall file with the City Clerk, within thirty days after the passage of this ordinance, a written acceptance of the same, and such acceptance shall be deemed an agreement to perform all and singular the conditions and requirements of this ordinance, otherwise, this ordinance shall be null and void.

SECTION 6. This ordinance shall be in force from and after its passage and legal publication, and the payment to the City Treasurer of the cost of such publication.

Passed October 21, 1895.

H. H. Burgess, City Clerk. Dan F. Reynolds, Jr. Pres. of the Council.

Approved by the Mayor October 31, 1895.

No. 12995A.

AN ORDINANCE granting permission to the Cleveland Electric Railway Company, its successors or assigns, to extend its street railroad across Deering, Stearns, and Fairchild streets, with suitable curves or connecting tracks in Euclid avenue and Cedar avenue.

SECTION 1. Be it ordained by the City Council of the city of Cleveland, That the Cleveland Electric Railway Company, its successors or assigns, be and it is hereby granted permission to extend its line of railway, and to construct, maintain and operate a double track street railway, with the necessary poles, wires, and other electrical appliances, across Deering, Stearns, and Fairchild streets, and to construct, maintain and operate suitable curved tracks to connect its present Euclid avenue and Cedar avenue lines with said proposed extension, said line of railway to be thence

constructed and operated through Cedar Glen road to and through the property of the Euclid Heights Company and the property of the Euclid Heights Realty Company, in a northeasterly direction to a point on Coventry road to be located between Berkshire road and Columbia boulevard.

SECTION 2. The right to cross said Deering, Stearns and Fairchild streets being hereby granted on the express condition that said railway is to be constructed and operated on the above route, and that the same is not to be extended south thereof.

SECTION 3. Said railway company shall pave a space sixteen feet in width across said streets on the line of this extension with the same material as the balance of the street is paved, and maintain the same to the satisfaction of the Board of Control.

SECTION 4. Said extension shall be operated as a part of the Euclid avenue main line of said company; and said company shall operate on said extension through cars to and from the Public Square, under a ten-minute schedule or headway between the hours of 6 a. m. and 8 p. m. and under a fifteen minute schedule or headway between the hours of 8 p. m. and 11 p. m.

SECTION 5. No additional fare shall be charged by said company by reason of this extension.

SECTION 6. Said extension shall be completed by June 17, 1897, after the passage of this ordinance, to some point on the property of the Euclid Heights Realty Company north of Derbyshire road.

SECTION 7. All tracks laid by said company under this ordinance shall be of standard gauge ninety pound rails, or such improved rails as may hereafter be consented to by the Board of Control, with suitable gutters at all necessary points, so as to permit the free flow of water under the same, and on such grades as are now or hereafter may be established by the City Council, and subject at all times to

be taken up and relaid whenever deemed necessary by the City Council to grade said street, construct sewers or lay water or gas pipes or wires therein, at the expense of said company.

SECTION 8. The laying of said tracks and the erection of said poles and the placing thereon of the necessary wires and appliances shall be under the supervision and control of the Director of Public Works, and said poles shall be of such size and shall be set at such places as shall be required by said Director. Should it become necessary in the prosecution of any work by the city that such poles be temporarily moved, such removal shall be made and such poles be reset by said company, at its own cost. The running of cars on any part of the lines of street railroad herein described of said company may be suspended by the Board of Control for such period as may at any time be necessary on account of repairs of streets or sewers or the making of any public improvements, and whenever it may be necessary to have any track taken up for any of the purposes aforesaid, the same shall be taken up and relaid at the expense of said company.

SECTION 9. Said The Cleveland Electric Railway Company shall be limited in the use of the tracks herein granted to the rights herein expressly granted.

SECTION 10. And be it further ordained, that the following specifications shall be required by the Council in the running of said company's cars thereon:

1st. Cars driven in the same direction shall not approach each other within a distance of thirty feet; and the rate of speed of all cars shall be under the direction of the City Council at all times.

2nd. The conductors and motormen of each car shall keep a vigilant watch of all teams, carriages, persons on foot, and especially children, on the track or moving toward it; and upon the first appearance of danger to such team or

person, or other obstruction, the car shall be stopped in the shortest time and space possible.

3rd. Cars after sunset shall be provided with signal lights.

SECTION 11. The rights and privileges herein granted shall be subject to the provisions of the general street railway ordinances, or so much of the same as may be applicable and not inconsistent herewith, and such further and future ordinances as the Council and Board of Control may prescribe.

SECTION 12. The failure or refusal of said company to comply with and perform all and singular the terms and conditions of this ordinance or the general ordinances of the city relating to street railroads now or hereafter in force, shall unless otherwise provided, work a forfeiture of this grant, and the rights and privileges hereby granted shall become null and void upon the passage of an ordinance by the Council to that effect, or in case said company shall fail to operate cars upon said extension for a period of twenty days after having begun operations, this grant, together with all rights hereunder, shall cease and determine.

SECTION 13. *This grant shall expire July* 1, 1914.

SECTION 14. Said railway company shall file with the City Clerk within ten days after the passage of this ordinance a written acceptance of the same, and such acceptance shall be deemed an agreement to perform all and singular the conditions and requirements of this ordinance, otherwise this ordinance shall be null and void.

SECTION 15. Said railroad company, its successors, or assigns, shall at all times hereafter save harmless and indemnify the city of Cleveland from any and all lawful claims and damages for injury to person or property and all cost and expenses to which said city may be subjected or made liable by any proceedings at law or in equity, or otherwise growing out of the construction, use, operation, or mainte-

nance of said railroad or out of the granting of the privileges in this ordinance granted or by reason of the giving or granting of the authority or privileges hereby granted.

And it is understood and agreed that the city of Cleveland shall not be held liable to said company, its successors, or assigns, for any damages resulting from the breakage of any sewer or water pipe or for any delay that may be caused by the construction of any sewer or laying of any water or gas pipe, or electrical conduit or wires and the necessary repairing of the same, or for any delay or damages that may be caused by fire or otherwise.

All rights vested in the City Council or Board of Control in respect to the grading or improvement of streets, construction of sewers, culverts, gutters, and the laying of electrical conduits, water and gas pipes therein, are in no way to be impaired or effected by any of the privileges granted to this company, its successors or assigns, by virtue of this ordinance.

SECTION 16. This ordinance shall be in force from and after its passage and legal publication and the payment to the City Treasurer of the cost of such publication.

Passed Sept. 21, 1896.

H. H. Burgess, City Clerk.

C. A. Witzel, V. Pres. of the Council.

Reconsidered Sept. 28,—yeas 17, nays 4,—and referred to the committee on streets and railways.

Finally passed October 5, 1896, and approved by the Mayor October 8, 1896.

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FILED.
OCT 30 1906
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 197.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, APPELLANT,

vs.

THE CITY OF CLEVELAND ET AL.

MOTION OF APPELLANT FOR INJUNCTION.

WILLIAM B. SANDERS,
ANDREW SQUIRE,
JOHN W. WARRINGTON,
Counsel for Appellant.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 23641

(20,083.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 197.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, APPELLANT,

vs.

THE CITY OF CLEVELAND AND THE FOREST CITY RAILWAY COMPANY, APPELLEES.

MOTION OF APPELLANT.

The Cleveland Electric Railway Company, appellant, respectfully moves the court for an order of injunction directed to the appellees, The City of Cleveland and The Forest City Railway Company, enjoining the said appellees and each of them, their agents, servants, attorneys, and representatives, from in any manner interfering with the appellant in the use of its street railroad tracks and property involved in this action upon Central avenue, Quincy street, and Erie street, in the city of Cleveland, pending the determination of the appeal in this court.

Appellant shows that, pending this appeal, which was promptly filed after the disposition of the case in the circuit court, it has continued the operation of the lines involved in dispute without interference by the city of Cleveland, but

that within the past few days, to wit, on the 26th day of October, 1906, the City of Cleveland forcibly, and by the use of the police force of the city, excluded the appellant from the operation of so much of its line of street railroad involved in this action as is between Prospect street and Central avenue upon Erie street; and the chief executive of said city gives out by public statement that it is the intention of the city, unless it is enjoined, to proceed to tear up the tracks of the appellant, both upon said Erie street and upon the remainder of the Central Avenue system involved in this action, which comprises about twelve miles of track, an integral part of the entire street railroad system operated by appellant, and thereby making it impossible, pending this appeal, for the appellant to operate such property, and seriously crippling the appellant in the operation of its system of 236 miles of railway in the city of Cleveland in accordance with the terms and conditions which have heretofore, in various ordinances of the city of Cleveland, been prescribed by the city council and appearing in the record herein; and to permit this destruction of the appellant's property involved in this action, pending this appeal, would render ineffectual the judgment of this court in the event that such judgment should be favorable to the contention of the appellant.

Appellant further shows that in the printed record herein the following facts appear:

I.

Appellant was complainant below, and from its amended bill of complaint (Record, 107) it appears that the purpose of its bill was to have declared void an ordinance of the city of Cleveland granting to The Forest City Railway Company the right to oust the appellant from the exercise of the right which it claimed from the city of Cleveland to operate a street railway line upon the streets in the bill described.

The cause having been heard upon the bill, answer, replication, and the testimony appearing in the record, the circuit court adjudged that the right of the appellant to operate its railway in said streets (Record, 276) expired on the 22d day of March, 1905, and refused the relief prayed for in the bill.

Appellant assigns, *inter alia*, as error this judgment of the court, and claims that its rights do not expire prior to July, 1914.

II.

From the record it appears that the appellant is a consolidated railway company formed by the consolidation of The East Cleveland Railroad Company, The Broadway and Newburgh Street Railroad Company, The South Side Street Railroad Company, and The Brooklyn Street Railroad Company; and is also the owner by purchase of all the tracks and franchises of The Cleveland City Railway Company, and that it is operating, as an entire system, about 236 miles of track. Of this 236 miles that which was originally operated by The East Cleveland Railroad Company as its Garden Street (now Central Avenue) extension was about 12 miles; that by virtue of various ordinances, constituting contract obligations of the appellant with the city growing out of said consolidation, the appellant is required to operate said entire system, run through cars, give transfers from one line to another; which obligations the appellant alleges are continuing obligations running to the year 1914.

III.

The controversy involved in this appeal relates to what was originally an extension built by The East Cleveland Railroad Company and known as the Garden Street branch of its main line. The original grant to The East Cleveland Railroad Company was for the operation of a line described

generally as beginning at the easterly limits of the city (then Willson avenue), thence, via Euclid avenue, Case avenue, Prospect street, Erie street, and Euclid avenue, to and around the Public square, and through Superior street to Water street; and this line, as originally constructed, constituted the "main line" of The East Cleveland Company, and its original grant from the city of Cleveland was for twenty years from September 20 1859.

The original grant for the Garden Street or Central Avenue line was made in January, 1868, as shown by the map in the record, page 302. This map discloses the main line and the relation of this branch or extension to such main line. This Garden Street branch was to be constructed and operated in connection with the main line of The East Cleveland Railroad Company. (See Record, 188.)

IV.

In March, 1868, the village of East Cleveland, a municipality adjoining the city of Cleveland on the east, granted to the East Cleveland Railroad Company the right to extend this Garden Street track or branch through the village of East Cleveland; and in March, 1873, the council granted to The East Cleveland Company the right to lay a double-track street railroad from its main line at the intersection of Erie and Prospect streets, through Erie street to Ohio street; through Ohio street to Garden street, connecting with its Garden Street extension at that point as the same had originally been constructed. The provisions of this grant were complied with by the company, and the Garden Street line became an extension intersecting the main line at Prospect and Erie streets, running thence through Erie to Ohio street; thence through Ohio to Garden street; through Garden to Baden street; and through Baden to Quincy street; and the company was required to operate this in connection with its main line, and run its cars through Erie street to Euclid

action upon Erie street has been and is now being used by the appellant as part of a loop line, and over such portion of Erie street there are operated, in addition to Central Avenue cars, cars from various other lines of the appellant, namely, Kinsman, Fairfield, Scovill avenue, Woodland avenue, and Jennings avenue; that the threatened action of the city in depriving the appellant of the use of such tracks upon Erie street will cripple its entire system and make it impracticable to so operate it as to bring to Monument square the cars of its various other lines above referred to, because to do so in any manner which did not involve the use of the Erie Street tracks would create a condition of congestion of traffic in Monument square to such an extent as to make street car operation during the busy hours of the day, night and morning, practically impossible.

Affiant further says that the following named companies, to wit, The Cleveland, Painesville and Eastern Railroad Company, The Eastern Ohio Traction Company, The Cleveland and South-western Traction Company, The Northern Ohio Traction and Light Company, and The Lake Shore Electric Railway Company, are operating lines of electric railway extending from Cleveland in different directions and accommodating the public in the various villages and cities within a radius of twenty-five or thirty miles from the city of Cleveland; that each of these companies, in addition to carrying passengers to and from surrounding towns and villages, is engaged in the business of handling package freight and express matter, and that, under and by virtue of the statutes of Ohio authorizing such an arrangement, for many years last past there has been and now is an arrangement between said last-mentioned companies and the appellant by which said companies and each of them, for the purpose of handling their freight and express matter in and out of the city of Cleveland, make use of the tracks of the appellant upon Erie street involved in this action, and that, in reliance upon such arrangement, there has been erected, adjoining Erie street

and accessible only over said tracks, a freight-house which is used by each and all of said suburban and interurban companies for the reception and delivery of freight and express matter carried by them in and out of the city of Cleveland; that to deprive the appellant of the use of said tracks, as threatened by the city of Cleveland and as said city is now doing, would not only irreparably damage the appellant, as hereinbefore set forth, but would irreparably injure the said interurban companies and each of them and hundreds of patrons of said companies who rely upon the service rendered by them in the matter of getting light freight and express matter in and out of the city of Cleveland; that no one of said companies has any other provision made in the city of Cleveland for the handling of such freight and express business, being absolutely dependent upon the use which the appellant is affording them of said tracks upon Erie street.

Affiant further says that the City of Cleveland claims no authority for interfering with the use or operation of appellant's tracks except the authority of the decree of the circuit court with respect to which this appeal is pending, and that, notwithstanding the pendency of this appeal, and which, as affiant is advised, will probably be reached for determination in this court at an early day, the said City of Cleveland is proceeding in the manner hereinbefore set forth, and threatens, as hereinbefore stated, to destroy the property of the appellant involved in this action; and that, in addition to the aforesaid action and threatened action of the City of Cleveland, affiant further says that the city has proceeded to further carry into effect the decree of the circuit court, pending said appeal, by undertaking to grant to the appellee, The Forest City Railway Company, by an ordinance, in addition to the ordinance set up in the bill of complaint herein, the right to construct and operate a line of railway on and over said Central Avenue route; but affiant says that said company has done nothing by way of construction

under such grant and is not in a position at present to undertake any such operation, as it has no construction upon any portion of such line and no equipment for its operation; and the ordinances by which it has been attempted to grant such right are void and of no effect, provided the contention of the appellant in this appeal is sustained by the final decree of this court.

Affiant further says that, by reason of what the city has already done, as above set forth, and the threats to proceed, as hereinbefore stated, he believes and alleges the fact to be that if notice of this application were given, the city would proceed before the matter could be heard in this court and destroy the appellant's property as hereinbefore set forth it is threatening to do.

Further affiant saith not.

JOHN J. STANLEY.

Sworn to before me by the said John J. Stanley and by him subscribed in my presence this 27th day of October, 1906.

[SEAL.] CHARLES C. OWENS.
A Notary Public Within and for the County of Cuyahoga, in the State of Ohio.

[Endorsed:] Supreme Court of the United States, October Term, 1905. No. 581. The Cleveland Electric Railway Company, appellant, *vs.* The City of Cleveland and The Forest City Railway Company, appellees. Affidavit of John J. Stanley.

avenue, through Euclid avenue to and around the Public square, and thence to Water street. (See Record, 200.)

V.

In May, 1876, The East Cleveland Railroad Company was authorized by the counsel to extend its Garden Street tracks from their then terminus at Baden street to Quincy street, and along Quincy to New street; and it was required to operate such extension in connection with the main line for the period of twenty years from May 23, 1876 (Record, 202).

VI.

On September 15, 1879, a general renewal of franchises was granted to The East Cleveland Railroad Company for the period of 25 years from and after September 20, 1879. This ordinance, however (see Record, 204), did not in terms include the Garden Street extension.

VII.

On March 22, 1880, an ordinance was passed (Record, 208) granting permission to the East Cleveland Railroad Company to extend its Garden Street tracks from the intersection of Baden and Quincy streets to the intersection with Lincoln avenue, and to equip and operate such extension and all the Garden Street tracks for the period of 25 years.

VIII.

On July 13, 1888 (Record, 219), an ordinance was passed granting to The East Cleveland Railroad Company the right to construct and operate its Euclid Avenue and Cedar Avenue lines by electricity (this including the "main line"), and this grant was to continue for the period of 25 years, not expiring, therefore, prior to July 13, 1913.

IX.

In February, 1885, the council authorized The East Cleveland Railroad Company to extend its Garden Street tracks in an easterly direction, and provided that the grant therein made should terminate "with the grant for the main line of The East Cleveland Railroad Company;" and subsequent to the time that the grant of the main line was extended to July 13, 1913, to wit, March 30, 1891, The East Cleveland Railroad Company was granted the right to construct a second or additional track upon Central avenue (Record and map, p. 227) from the east line of Willson avenue to the right of way of the Cleveland and Pittsburgh Railroad Company, and to connect said tracks so authorized with the tracks then in and upon Central avenue at Willson avenue; and in this ordinance it is provided that the right therein granted, which was to lay an additional track and operate in connection with the main line, should be valid "until the expiration of the grant for said company's main line."

X.

April 20, 1891 (Record, 228, 229), an ordinance was passed granting to the company the right to lay an additional or second track in Quincy street, and providing that the right therein granted "shall be valid until the expiration of the grant for said company's tracks in Quincy street east of Lincoln avenue, to wit, July 13, 1913."

XI.

February 19, 1894, an ordinance was passed (Record, 235; Map, p. 239) providing for the construction by The East Cleveland Company and The Cleveland City Railway Company of a cross-town line upon Willson avenue, and requir-

ing by the terms of said ordinance an express agreement on the part of The East Cleveland Company that it would build and construct such line and would so operate it that a passenger upon any car operated upon any part of Willson avenue, for one fare, should be entitled to be transferred to any other line of the appellant intersecting or coming to Willson avenue, and with the additional right and obligation to transfer from such second line to a car of any other line of the company operating the same which crosses the Cuyahoga river; and this line, with such obligation to transfer, is to be operated until July 1, 1914.

XII.

Prior to the consolidation which formed the appellant, the various constituent companies operated independent lines of street railroad. There was little, if any, interchange of traffic, and the public were required, with few unimportant exceptions, in patronizing said lines and desiring to take passage on another line, to pay an extra fare; and on May 29, 1893 (Record, 230, and maps at pp. 231-233), the council by resolution prescribed the terms and conditions upon which said various companies might be consolidated, and required that thereafter all of the lines should be operated as one system, and that but one fare should be charged for a continuous ride over any line of railroad, and requiring transfers to any other line, and requiring the company to accept in writing the terms of such resolution. Such acceptance was filed, and since such consolidation all of the lines have been operated as required by said resolution and as an entire system. Since 1903, when appellant acquired the lines of The Cleveland City Railway Company, it has been required to establish through lines and through car service, and by reason of these consolidations and purchases and the action of the council in fixing the terms and con-

ditions upon which the consolidation might be made operative, the tracks originally built upon Garden street as part of an extension of the main line of The East Cleveland Railroad Company had become part of its entire system of 236 miles over which through car service is given, and this so-called Garden Street line long since lost any identity as a separate and distinct line.

XIII.

The questions pending for decision upon this appeal, briefly stated, are these:

(*a*) It not being disputed that the franchise for the main line of The East Cleveland Company does not expire prior to July, 1913, do not these several extensions and consolidating ordinances evidence an intention and a contract by which the right to operate the so-called Garden Street extension or branch is to expire at the same time as the franchise for the main line?

(*b*) As, under the ordinance providing for the construction and operation of a cross-town line on Willson avenue, which is to be operated until 1914, the appellant was required to construct and operate in such manner as to give transfers to and from such line to all of its existing lines, is not such a contract, in legal effect, a recognition or a grant of the right to continue the operation of the lines crossing Willson avenue until July, 1914?

(*c*) As the counsel fixed the terms and conditions upon which the consolidation now forming the appellant could be made, and required the various lines to be operated as an entire system, did not such requirement necessarily involve a corresponding right upon the part of the appellant to

operate such entire system at least until the expiration of its franchise, expiring July 13, 1913?

WILLIAM B. SANDERS,
ANDREW SQUIRE,
JOHN W. WARRINGTON,
Of Counsel.

[Endorsed:] Supreme Court of the United States, October Term, 1905. No. 581. The Cleveland Electric Railway Company, appellant, *vs.* The City of Cleveland and The Forest City Railway Company. Motion of appellant.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 197.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, *Appellant,*

vs.

THE CITY OF CLEVELAND and THE FOREST CITY RAILWAY COMPANY, *Appellees.*

Affidavit.

UNITED STATES OF AMERICA,
The State of Ohio, County of Cuyahoga, ss:

JOHN J. STANLEY, being first duly sworn according to law, says that he is the vice-president and general manager of The Cleveland Electric Railway Company, appellant herein; that on the 26th day of October, 1906, the City of Cleveland, through its police department, acting under orders of the mayor of said city, forcibly excluded the said The Cleveland Electric Railway Company from the use and operation of its

railway tracks upon Erie street between Prospect street and Central avenue, being a portion of the lines of railway involved in this action, and still excludes it from any use of such tracks, keeping the same under guard of policemen for that purpose; that the mayor of the city of Cleveland gives out in the public prints a threat and a statement of his intention to tear up the tracks of the appellant upon Erie street, and also gives out and threatens that he will also cause to be removed and torn up all of the tracks of the appellant upon the Central Avenue line, being the entire subject-matter involved in this litigation and comprising about twelve miles of track. Affiant says that this statement of the mayor has been given wide publicity in the public prints in Cleveland; and the mayor has also added and threatened that this he will do unless he is enjoined by some court from so doing; and affiant says that, unless restrained by the order of this court, the said City of Cleveland will proceed at once to tear up and remove the tracks and appliances of the appellant from all of the streets involved in this action.

Affiant says that said company is operating about 236 miles of track as an entire system, and has ever since the consolidation referred to in the record operated such system under the terms and conditions prescribed by the city council of the said city in the various ordinances referred to in the record herein.

Affiant says that the city of Cleveland, with respect to its street railway system, is so laid out as that it is necessary for all cars of the system in some way to reach Monument square, the center of the business portion of the city; that the space in such Monument square is so limited as that, in the practical operation of the lines, it is necessary to use loop lines in order to avoid a congestion of cars during the busy hours of the day, which would seriously inconvenience the public, both in the use of the cars and in the use of the highway; and because of these facts and under the orders and with the acquiescence of the city authorities, for many years last past the portion of the Central Avenue lines involved in this

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 197.

THE CLEVELAND ELECTRIC RAILWAY COMPANY, APPELLANT,

vs.

THE CITY OF CLEVELAND AND THE FOREST CITY RAILWAY COMPANY, APPELLEES.

AFFIDAVIT OF HORACE E. ANDREWS.

UNITED STATES OF AMERICA, DISTRICT OF COLUMBIA, *ss:*

HORACE E. ANDREWS, being first duly sworn according to law, says that he is the president of appellant, The Cleveland Electric Railway Company, referred to in the affidavit of Tom L. Johnson, filed herein; that he has read said affidavit, and in reply thereto says:

It is true, as therein stated, that affiant had the negotiation with Mr. Johnson as mayor upon the subject-matter referred to in the letter of June 12th and this affiant's reply thereto under date of June 26th, set forth in the affidavit of said Johnson; but affiant says that it is not true, as stated in the affidavit of said Johnson, that The Cleveland Electric Railway Company, by affiant as its president, "refused to suggest such amendments in the proposed form, or

to propose any other form of agreement, and that as a result of said meeting the said Cleveland Electric Railway Company refused to enter into any such agreement, beyond an expression of a willingness on its part to have an accounting when the decision of this cause in this court should be made upon a basis then to be determined." On the contrary, affiant avers the fact to be that the affidavit of the said Johnson omits a most material part of the negotiations between him and this affiant; and affiant avers that under date of July 17th, 1905, he addressed to the said Johnson, as mayor, the following letter:

"JULY 17TH, 1905.

"Hon. TOM L. JOHNSON, *Mayor,*
"Cleveland, Ohio.

"DEAR SIR: In answer to your request for a written communication on the subject of the operation of cars in Central avenue and Quincy street, I submit herewith a form of contract between the company and the city, which I believe expresses fully the agreement we reached at our recent conference in your office, namely, that, if the Supreme Court of the United States, on final hearing of the lawsuit now pending in the circuit court, shall decide that the franchise rights of the company in Central avenue and Quincy street expired on the 22nd of last March, the company will pay to the city all that it shall receive from the operation of its cars in said portions of streets as are involved in excess of operating expenses, taxes, depreciation and six per cent. interest upon the value of the physical property used in the operation of the cars.

"Yours very truly,
"HORACE E. ANDREWS, *President.*"

That the following is the form of contract submitted with said letter, and which affiant then, as president, offered to make, viz:

"Whereas, the circuit court of the United States for the northern district of Ohio, eastern division, has held that the right of The Cleveland Electric Railway Company to operate in Central avenue and Quincy street expired on the 22nd day of March, 1905; and,

"Whereas, the city council of the city of Cleveland, on the 11th day of January, 1904, passed an ordinance entitled 'An ordinance granting to The Forest City Railway Company, its successors and assigns the renewal right to maintain and operate existing street-railroads in the following streets, to-wit: Commencing at the intersection of Prospect and Erie streets in the city of Cleveland, State of Ohio; thence southerly on, over and along Erie street to Central avenue; thence on over and along Central avenue to Lincoln avenue; also commencing at the intersection of Quincy street with Wilson avenue in said city; thence easterly on, over and along Quincy street to Woodland Hills avenue,' and the court of common pleas of Cuyahoga county, Ohio, has decided said ordinance to be illegal and void; and,

"Whereas, The Forest City Railway Company is perfecting an appeal to the circuit court for a review of said decision; and,

"Whereas, it would cause inconvenience to the public and to The Cleveland Electric Railway Company to suspend the operation of cars in said streets pending the determination of the matters now in litigation; and,

"Whereas, The Cleveland Electric Railway Company is willing, and desires, to continue the operation of its cars in said streets, but does not ask to take any advantage of said continued operation beyond the real date of the expiration of its franchise rights therein;

"Now, therefore, this memorandum of Agreement, made this — day of ——, 1905, by and between the City of Cleveland and The Cleveland Electric Railway Company, witnesses:

"That, for and in consideration of the City of Cleveland refraining from interfering with the continued operation of the cars of The Cleveland Electric Railway Company in Central avenue and Quincy street as said cars are now operated, The Cleveland Electric Railway Company agrees that it will furnish good and adequate street-railway service upon said streets at the rates of fare and transfer now charged by it, and, if the Supreme Court of the United States shall hold that its rights in said streets expired on the 22nd day of March, 1905, will pay to the city all of its earnings from the operation of cars in said Central avenue and Quincy street, less operating expenses, taxes, proper depreciation charges and six per cent. interest upon the

value of all physical property in any way used for or contributing to such service.

"In consideration of The Cleveland Electric Railway Company agreeing to furnish such service, and agreeing, in case of a decision by the Supreme Court of the United States adverse to its claims, to pay to the city such net earnings from the operation of its cars upon Quincy street and Central avenue, the City of Cleveland hereby agrees to and does permit The Cleveland Electric Railway Company to continue the operation of its cars in said streets, and to charge for transportation therein its present rates of fare, until the final decision of said case by the Supreme Court of the United States.

"The street-railway tracks of The Cleveland Electric Railway Company in Quincy street being a part of its Scovill-avenue and Pearl-street line, as now operated, and its tracks in Central avenue being a part of its Central-avenue line, as now operated, said company shall, and it hereby agrees that it will, immediately upon the signing of this agreement, report to the City of Cleveland its daily gross receipts upon said Scovill-Pearl and Central-avenue lines, separately, from the 22nd day of March, 1905, to the first day of July, 1905, and thereafter and until the final adjudication of said case of The Cleveland Electric Company against the City of Cleveland, now pending in the circuit court of the United States for the northern district of Ohio, eastern division, involving the right of the company to operate in Central avenue and Quincy street, make similar reports monthly, on or before the tenth day of each month, of the daily gross receipts of the preceding calendar month or part thereof.

"If said case shall be decided in favor of the city, The Cleveland Electric Railway Company shall, within thirty days after such decision, pay to the city, with interest at the rate of five per cent. per annum, compounded annually, the sum due the city under this agreement for the time from the 22nd day of March, 1905, to the date of such decision, the monthly sums, for the purpose of calculating interest, being deemed to be due on the 10th day of each month for the preceding month; and thereafter, until this agreement is replaced by some other agreement between the parties hereto, or until the Quincy-street and Central-avenue lines of street-railway cease to be operated by The Cleveland

Electric Railway Company, there shall be paid to the city, on or before the 20th day of each succeeding month, the amount due for the preceding month.

"Either party shall have the right, after the final decision of the Supreme Court of the United States, to terminate this agreement on thirty days' notice to the other.

"This agreement shall not prejudice the rights of the city or the company in said lawsuit pending in the said circuit court of the United States.

"Witness the signature of the City of Cleveland, by the mayor, thereunto duly authorized by resolution of the council, and the signature of The Cleveland Electric Railway Company, by its president, thereunto duly authorized by resolution of the board of directors of the company, affixed hereto on the — day of July, 1905."

This being the state of negotiation, the said Johnson, as mayor, refused to make the arrangement as proposed by this affiant, or to make any other arrangement than such as was expressed in the form of agreement prepared by the said mayor and appearing in his affidavit. That the arrangement so proposed by the mayor was such that neither in justice to the company nor to the city could affiant consent thereto; the proposal of the mayor making it necessary to determine in advance, by arbitrary estimates, a division as to gross and net receipts and operating expenses, taxes, and repairs, which, in the judgment of this affiant, it was impossible to fairly so fix in advance; and as shown in the agreement which affiant offered to make, the company then was and at all times has been willing to make an agreement with the city by which, in the event of an adverse ruling in this court, the profits, if any, derived from the operation of the Garden Street tracks might be determined by actual results of operation at the end of the period, and an accounting made to the city on the basis of actual and not upon that of estimated receipts.

Affiant further says that it is not true, as stated in the affidavit of the said Johnson, that his action in stopping the

operation of cars upon Erie street was not done in an oppressive and arbitrary manner, nor is it true that he gave any notice to the company of his intention so to do. No notice was given to the company of the intention of the city to take possession of its Erie Street tracks, and its first knowledge of the action of the city was the discovery by its employees that the police department of the city of Cleveland, during the business hours of the day, had taken possession of its tracks upon Erie street, and excluded all of the company's cars therefrom, and that such street was under a police guard for the purpose of continuing such exclusion.

Affiant further says that it is not true, as stated in the affidavit of said Johnson, that the lines operated by the railway company "could be conveniently operated without the use of the tracks in said portion of Erie street without inconvenience to the complainant or to the people of Cleveland, and without interrupting the operation of the cars of the complainant company even upon the streets and parts of streets as to which the circuit court of the United States * * * adjudged its rights to have expired." On the contrary, affiant avers the facts to be as stated in the affidavit of John J. Stanley, the general manager of the company, filed herein, and that the Erie Street tracks form a part of an important terminal loop used by the company in operating its general system coming to the public square, and that the necessary effect of depriving the railway company of the use of the tracks upon Erie street was to create a congestion of traffic in Ontario street and the public square during the busy hours of the day to such an extent as to seriously cripple the company in the operation of its many lines coming to the public square, causing serious delay in the handling of cars, so that passengers, instead of having the frequent service required by the ordinances, were compelled to wait during long intervals of time while the employees of the company were doing their utmost to straighten out the tangle and con-

gestion resulting from so being deprived of the Erie Street tracks; and this condition of crippled service and inconvenience to the public continued until the issuing of the restraining order in this court restoring, for the time being, to the railway company the use of its Erie Street tracks.

With respect to the averments of the affidavit of the said Johnson that the railway company is continuing to charge a cash fare of five cents, and selling tickets at eleven for fifty cents, whereas The Forest City Railway Company is willing to construct and operate a line in said streets with a rate of maximum fare of three cents, affiant says that in charging five cents and selling tickets at eleven for fifty cents it is exercising its contract rights with the city of Cleveland, as affirmed by this court in the case of The City *vs.* The Cleveland Electric Ry. Co., 194 U. S., and that by reason of the system of transfers made necessary by the consolidation and unification of system referred to in the bill herein, it results that the average fare received by the railway company at this time per passenger carried, including transfers, does not exceed three and forty-five one-hundredths cents, as the fact is that between thirty-five and forty per cent. of the passengers carried receive free transfers as the system is now operated.

Affiant further says that The Forest City Railway Company referred to in the affidavit of said Johnson as being willing to operate the Garden Street line at a three-cent fare, has not had at any time pending this appeal, and has not now, the equipment and generating capacity or the construction in said streets necessary for such operation; and affiant says that the said Forest City Company has never obtained a legal grant from the city of Cleveland for the operation of tracks in the portion of Erie street in controversy in this cause, having been unable to procure the consent of property-holders necessary to the validity of such a grant. That any and all grants which the said Forest City Company claim to

have received from the city of Cleveland with respect to operation of the Garden Street route are involved in litigation, the validity of such grants being attacked, among other grounds, upon the ground that they constitute contracts between the city and said Forest City Railway Company, and that said Tom L. Johnson, the mayor of the city, in contravention of public policy and of express statutes of Ohio, was at the time such grants were made and now is financially interested in said Forest City Company, and in testimony of the said Johnson which has been publicly taken in said litigation it has been by the said Johnson admitted that he has guaranteed against loss very many of the stock subscribers, aggregating many thousands of dollars, and as respects stock subscriptions amounting to some sixty thousand dollars he has not only guaranteed the subscribers against loss but has, jointly with another, agreed to take the stock off the hands of such subscribers with six per cent. interest at their option within two years, and that he has personally guaranteed substantially all of the obligations of said Forest City Railway Company incurred in the purchase of rails and equipment for its enterprise.

HORACE E. ANDREWS.

DISTRICT OF COLUMBIA, *ss:*

Subscribed and sworn to before me this the tenth day of November, 1906.

[SEAL.] JOHN A. WHELAN,
Notary Public.

(My commission expires Nov. 8, 1910.)

FILE COPY.

Office Supreme Court, U. S.
FILED
OCT 30 1907
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

THE CLEVELAND [illegible] COMPANY,

THE CITY OF CLEVELAND AND THE FOREST CITY [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 197.

THE CLEVELAND ELECTRIC RAILWAY COMPANY,
APPELLANT,

vs.

THE CITY OF CLEVELAND AND THE FOREST CITY RAILWAY COMPANY, APPELLEES.

BRIEF ON MOTION FOR INJUNCTION.

Statement.

The appellant files herewith its motion for an order of injunction against the appellees and an affidavit in support of the motion. This is an emergency proceeding. It is necessary in order to prevent the destruction of the subject of the action pending here on appeal—twelve miles of street railway with the right to operate cars thereon—until final decree can be made by this court.

The main case is pending here on an appeal, having been brought from the equity side of the Federal circuit court sitting in Cleveland, Ohio. A brief statement of the facts and course of procedure of the case is presented in the motion aforesaid, commencing with paragraph I and extending to and including paragraph XII thereof.

The questions pending for decision upon the appeal are briefly stated in paragraph XIII of the motion.

We maintain that the present case must be ruled by the decisions of this court in Cleveland *vs.* Cleveland City Ry. Co., 194 U. S., 517, and Cleveland *vs.* Cleveland Electric Ry., 201 U. S., 529.

I.

COURT HAS POWER TO GRANT ORDER OF INJUNCTION.

Section 716, Compiled Statutes of 1901, vol. I, p. 580, provides:

"The supreme court and the circuit and district courts shall have power to issue writs of *scire facias*. They shall also have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeably to the usages and principles of law."

In *Ex parte* Milwaukee R. Co., 5 Wall., 188, 1st Syl., it is said:

"A case being properly in this court by appeal, the court has a right to issue any writ which may be necessary to render its appellate jurisdiction effectual."

Accordingly, the court allowed a supersedeas of the judgment of the district court, although the district judge had refused to do so on the ground that the bond offered had been signed by a non-resident of the district. The appellant had petitioned this court for a mandamus to compel the district judge to approve the bond and allow a supersedeas. This court refused to interfere with his discretion, but itself allowed a supersedeas, basing its right to do so upon the fourteenth section of the judiciary act of 1789, now Section 716, *supra*.

In Hardeman *vs.* Anderson, 4 How., 640, plaintiff in error had sued out a writ of error and given bond, which of itself would have operated as a supersedeas, but by mistake he failed to perfect his proceeding, and the case was dismissed. The plaintiff in error having filed another writ of error later and given bond and made a motion in this court for a supersedeas, the motion was granted.

These cases were cited with approval in *In re* McKenzie, 180 U. S., 536, bot. 549, and p. 551.

It ought to follow from these decisions alone that a preliminary injunction may be granted until a hearing on the merits of the appeal, for otherwise the ruling on the appeal might be of no value.

In Leonard *vs.* Ozark Land Co., 115 U. S., 465, at p. 468, it was said:

"This court no doubt has power to modify an injunction granted by a decree below in advance of a final hearing of an appeal on its merits."

There can be no difference in principle between granting a temporary injunction pending appeal and modifying an injunction of the court below pending appeal.

In Murray *vs.* Over-toltz, 8th Fed., 110, McCrary, C. J., in refusing to interfere by injunction to prevent the execution of a judgment of a State court upon the ground that it had been superseded by an appeal therefrom to this court had occasion to speak of the remedy which we now seek. Referring to the power of this court, he said:

"That court is authorized to issue any writ which may be necessary for the exercise of its jurisdiction, and agreeable to the usages and principles of law. Rev. St., sec. 716. If the effect of the threatened proceedings would be to interfere with the exercise of the jurisdiction of the supreme court in the *quo warranto* case or to deprive the complainants of the full benefit of their writ of error and supersedeas bond, then the supreme court can enjoin them and a temporary injunction for that purpose can be granted by a judge of that court."

Jurisdiction analogous to that invoked here was exercised by the supreme court of Ohio, under Section 5573 of the Revised Statutes of that State, in Yeoman *vs.* Lasley, 36 O. S., 416. After that case had been taken to the supreme court of Ohio upon a proceeding in error, it was sought practically to deprive the plaintiff in error of the benefit of a reversal of the judgment it complained of; whereupon an injunction in the supreme court in the proceeding in error was sought and granted to hold the subject of the action *in statu quo* until the supreme court should dispose of the proceeding in error. Say the court in the last paragraph of the opinion, at p. 418:

"The making of such an allowance (that is, of injunction) is not the exercise of original, but of appellate jurisdiction, and is intended only for the protection of the rights of the parties in the suit or matter under review, on error."

It is not necessary to offer further citations. It seems to us plain that the temporary injunction here asked falls within the ordinary power of a court of equity to ~~show~~ allow and enforce any order which in its nature is ancillary to and necessary to render effectual its final decree in the case in which the order is sought. It is not conceivable that a court in the exercise of its equitable appellate power is without authority to hold the subject of an action pending before it in a fixed position until ultimate decision of the case is made.

II.

FORM OF ORDER.

Notice of this proceeding was not given to the other side because of the statement at the end of affidavit made by the vice-president and general manager of appellant, that if notice of this application were given, "the city would pro-

ceed before the matter could be heard in this court and destroy appellant's property as hereinbefore set forth." * * * We take it that the true method to avoid such action on the part of appellees and to avoid injury to either side, would be to allow an order compelling appellees to show cause at a specified time why the order of injunction asked should not be granted, and meanwhile to grant a temporary order restraining them until the matter can be disposed of by the court. In this way no harm could come to the appellees, no matter what should be the holding of the court upon the showing made by them. It would at most only be to permit a continuation of the operation of the cars as heretofore.

To deny this order would, in effect, be to allow appellees to carry into final execution *now* the very decree that is sought to be reversed on the appeal.

WILLIAM B. SANDERS,
ANDREW SQUIRE,
JOHN W. WARRINGTON,
Counsel for Appellant.

FILE COPY.

In the Supreme Court of the United States.

No. 197.

October Term, 1906.

Office Supreme Court
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JAMES H. McKEN

The Cleveland Electric Railway Company,
APPELLANT,

vs.

The City of Cleveland, Et Al.,
APPELLEES.

Brief for Appellant.

WILLIAM B. SANDERS,
ANDREW SQUIRE,
JOHN W. WARRINGTON,
Counsel for Appellant.

In the Supreme Court of the United States.

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The Cleveland Electric Railway Company,
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Brief for Appellant.

WILLIAM B. SANDERS,
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Counsel for Appellant.

Press of
The Gates Legal Publishing Co.,
Cleveland, Ohio.

In the Supreme Court of the United States.

No. 197.

October Term, 1906.

THE CLEVELAND ELECTRIC RAILWAY COMPANY,
APPELLANT,

vs.

THE CITY OF CLEVELAND, ET AL.,
APPELLEES.

Brief for Appellant.

STATEMENT.

I.

The appellant appeals from the decree of the Circuit Court for the Northern District of Ohio, entered December 4th, 1905.

The case was heard upon the bill, answer, replication, and testimony, appearing in the Record.

As appears from the Amended Bill of Complaint (Record, page 107), the complainant below filed its bill against the appellees seeking to have declared void an ordinance of the City of Cleveland passed January 11th, 1904, and granting to The Forest City Railway Company the right to maintain and operate a line of street railroad in Erie Street and Central and Quincy Avenues in the City of Cleveland. This relief is asked in the bill upon the ground that the complainant, under existing contracts between it and the City of Cleveland, evidenced by ordinances of the city council, is operating a line of

street railroad on the streets named in said ordinance of January 11th, 1904; that the right of the complainant does not expire until 1914; and that the legislative act of the city council seeking to transfer these street railroad routes to the Forest City company is an impairment of the existing contract rights of the complainant.

The ordinance of January 11th, 1904, attacked in the bill, appears in the Record at page 244, and is entitled:

> "An ordinance granting to The Forest City Railway Company, its successors and assigns, the renewal right to maintain and operate the existing street railroads in the following streets: Commencing at the intersection of Prospect and Erie streets in the City of Cleveland, State of Ohio; thence southerly on, over and along Erie Street to Central Avenue; thence easterly on, over and along Central Avenue to Lincoln Avenue; also commencing at the intersection of Quincy Street with Willson Avenue in said city; thence easterly on, over and along Quincy Street to Woodland Hills Avenue."

CENTRAL AVENUE WAS FORMERLY GARDEN STREET, and the ordinance attacked in the bill conferred upon The Forest City Railway Company a right to occupy and use the Garden Street extension route operated by the appellant.

The Circuit Court refused the relief asked, because it held and decreed (Record, page 276) that the right of the complainant to maintain and operate its railroad upon the streets in controversy expired on the 22nd day of March, 1905.

The bill also charges that the ordinance attacked is invalid on another ground, namely: The ordinance recites that the rights of the complainant will expire on the 22nd day of March, 1905, and undertakes to grant to the Forest City Company, the appellee, a renewal of the rights of the complainant; in other words, seeks to renew a grant in favor of a stranger to the granting contract.

APPELLANT'S CONTENTION RESTS UPON THE FOLLOWING FACTS:

(A) The lines of railroad track involved in this cause are known and appear in the Record as the Garden Street or Central Avenue lines, and are extensions of the main line of The East Cleveland Railroad Company. The franchise to operate this "main line" does not expire until January 13th, 1913 (Record, page 219, 220, Sec. 6).

(B) By express provisions of ordinances, the City has granted to appellant the right to operate these Central Avenue or Garden Street extension tracks until the expiration of the grant for the "main line," namely: July 13th, 1913 (Record, pages 211-227-228).

(C) By ordinance of 1894 council provided for the construction and operation of a cross-town line upon Willson Avenue by the appellant, compliance with which requires the operation of the Central Avenue or Garden Street lines involved in this action until 1914; and this last-mentioned ordinance grants the rights thereby conferred until July, 1914 (Record, page 235 at 237, Sec. 10).

(D) As respects all of these extension grants, the City received adequate consideration in improved service by way of rapid transit facilities, and obtained for the public a reduction of fare in that passengers were thereafter carried longer distances for one fare and given the benefit of a liberal transfer system; and the period of extended grant in no case exceeded nine years.

II.

The facts supporting the foregoing statements appear in the Record, and are as follows:

The complainant, The Cleveland Electric Railway Company, is a consolidated street railway company formed by the consolidation of the several constituent companies, namely: The East Cleveland Railroad Company, which was operating a line of railway on Prospect Street, Euclid Avenue, Wade Park Avenue, Central Avenue (formerly Garden Street), Cedar Avenue, and various extensions; The Broadway & Newburgh Street Railroad Company, which was operating a line of railroad from Newburgh to the central part of the city; The Brooklyn Street Railroad Company, which was operating from the south side of the city to the Public Square, and thence to the southeasterly portion of the city; and The South Side Street Railroad Company, which was operating a line of railway from the south side of the city through Scranton and Jennings Avenues.

Since this consolidation the company has been, and now is, operating a system of railway, giving through car service and general transfers, over two hundred and thirty-six miles of track, and it is conducting this operation under grants from the City of Cleveland made to the respective companies which entered into this consolidation and The Cleveland City Railway Company.

The complainant is also the owner, by purchase, of all the tracks and franchises of The Cleveland City Railway Company.

The line of road particularly involved in this case was constructed and is now in operation under a grant made to The East Cleveland Railroad Company.

In the amended bill (Record, page 107) is set out chronologically a history of all of the ordinances and grants pertaining to the lines of The East Cleveland Railroad Company, and in the Record will be found copies of all the ordinances pertaining thereto.

To the end that the Court may be at once advised as to the particular ordinances here involved, we shall confine this statement to the ordinances and grants which we conceive to be ultimately controlling in determining the right of the complainant to a reversal of the decree from which it has appealed.

III.

MAIN LINE OF THE EAST CLEVELAND RAILROAD COMPANY.

The charter of the East Cleveland company (Record, page 259) shows that the company was organized

> "*for the purposes of constructing, equipping and maintaining a railroad, commencing at the intersection of the Euclid and Newburgh roads at Doan's Corners in said Township of East Cleveland, and running thence westerly to and into the City of Cleveland, in said County of Cuyahoga, and terminating at or near the Southwesterly corner of the Public Square.*"

Between the chartered termini the company, by permission of the council, in 1859 and 1860 (Record, pages 182, 184 and 185), located and constructed its line from Willson Avenue through Euclid Avenue to Case Avenue; through Case to Prospect Street; Prospect to Erie Street, and thence to the Public Square. This was the "main line" of the company, and in all subsequent legislation by the city council has been so recognized. This appears in the following, among other, legislative acts subsequent to 1859.

In 1868 (Record, page 188) the chartered line at that time having been constructed, the council authorized the Garden Street extension, and, in so authorizing it, recognized the "main line" of the company by providing that the extension should be built *"to connect with the main line of its railroad"*; and also in the further provision that, in the operation of this extension, the company shall have the right

> *"to continue to use and occupy the streets, avenues and public grounds over which its main line is now constructed and operated, westerly from the junction of said road with the main line to its westerly terminus."*

Again, an agreement between the Village of East Cleveland and the East Cleveland Company (Record, page 194), providing for a portion of the construction in the then township of East Cleveland, authorized an extension which is described as *"being an extension or branch of its main road located in the City of Cleveland;"* and this was an extension of the chartered line of the company.

Again, on March 25th, 1873 (Record, pages 199-200 and Map), was passed a resolution which referred to the laying of new tracks by the company, and the "main line" as the chartered line of the company is referred to in the grant, which is, in substance, *"to lay a double-track street railroad in Ohio Street * * * to connect with their main track at this point."*

Again, on May 23rd, 1876 (Record, page 202), in legislating as to an extension of tracks upon Garden Street, authority is given to equip and operate said extension *"in connection with said branch and its main line."*

Again, in 1885 (Record, page 211 and Map), in an ordinance pertaining to an extension of the Garden Street lines, authority is given to equip and operate said extension *"in connection with said branch and its main line."*

In 1887 (Record, page 217), authority is given for a further extension in Garden Street, and authority to operate it *"in connection with said branch and its main line."*

On July 13th, 1888 (Record, page 219), in an ordinance granting the East Cleveland company the right to operate on Euclid and Cedar Avenues by electricity, the Euclid Avenue line is expressly recognized as the "main line" in section 6 of the ordinance, which provides that the grant therein made shall be void unless a satisfactory electrical system is extended over *"their entire main and Cedar Avenue lines within eighteen months."*

May 13th, 1889 (Record, page 222), the Euclid Avenue or chartered line is recognized as the "main line" in a resolution requiring the company to extend its electrical system, and in this resolution it is recited:

> "Whereas, * * * it is stipulated that the East Cleveland Company shall, whenever required by the council, use the same system of motive power on the entire length of its main and Cedar Avenue lines * * *.
>
> "And Whereas, the use of electricity as a motive power on such railroad has fully demonstrated its practicability and necessity, * * *;
>
> "Resolved, That the East Cleveland company be, and it is hereby, authorized and required, as soon as practicable, to extend the use of such motive power over its MAIN and Cedar Avenue lines to the westerly termini thereof."

February 20th, 1882 (Record, page 261), an ordinance was passed permitting The East Cleveland Railroad Company to extend its line of railroad on Hayward and Cedar Avenues, the grant being

> *"to extend its line of railway from the present track at the intersection of Prospect Street and Hayward Street * * * and to equip and operate said extension * * * in connection with its main line and terminating with the grant for the main line."*

Again, on July 21st, 1884 (Record, page 263), another ordinance was passed relating to an extension of the Cedar Avenue extension, which is here called the Cedar Avenue branch of its railway. The grant here is

> *"to extend the Cedar Avenue branch of its railway from the termination of its present track * * * and equip and operate said extension as a single track railroad in connection with said branch and its main line, and terminating with the grant for the main line."*

Again, September 9th, 1887 (Record, page 264), a grant is made to The East Cleveland Railroad Company to lay a double-track railroad in Perry Street and Cedar Avenue; this being a further extension of the Cedar Avenue line; and it is there provided that

> *"the rights herein granted shall terminate at the expiration of the present charter for the said company's main line."*

February 24th, 1888 (Record, page 266), an ordinance was passed for an additional track in Cedar Avenue, and it is there provided that

> *"The right herein granted shall be valid until the expiration of the grants for the said company's main line."*

Again, October 13th, 1890 (Record, page 267), another ordinance was passed with reference to an additional track upon the Cedar Avenue extension, and it is here provided:

> *"And the rights herein granted shall expire with the grants for the said company's main line; that is, July 13th, 1913."*

Again, April 12th, 1889 (Record, page 269), an ordinance was passed authorizing the East Cleveland Company to extend its street railroad in what is known as Wade Park Avenue. By section 4 of this ordinance provision is made as to the rate of fare over the "main line" and extension; and in section 5 it is provided:

> *"The extension of said double-tracks and appliances as herein provided for shall terminate with the present grant for said East Cleveland Railroad Company's main line."*

IV.

GARDEN STREET EXTENSION 1868.

The "main line" of the East Cleveland Company, being as above stated, on *January 14th*, 1868 (*Record, page* 188), such company was authorized to construct and operate, in connection with its "main line," an extension or branch line connecting with the main line of its road at the intersection of Prospect and Brownell Streets; thence to Garden Street (now Central Avenue); and thence easterly along the center of Garden Street to Willson Avenue, to the easterly boundary of said city. (*See Map, page* 188.) This last-mentioned grant is the original grant under which the Garden Street extension (now Central Avenue) was constructed. The grant by its terms was to continue during the period of twenty years; that is to say, until January 14, 1888; and, as part of this grant, the company was to operate this extension in connection with the "main line" and

"to continue to use and occupy the streets, avenues and public grounds over which its main line is now constructed and operated westerly from the junction of said road with the main line to its westerly terminus for the same length of time."

It is to be observed here that the original grant for the construction of this road was for and as an extension of the "main line" and to be operated in connection with the "main line," and that a portion of the territory which the grant authorized to be used at that time comprised a portion of the "main line."

V.

In March, 1868, the Village of East Cleveland granted to the East Cleveland Company the right to extend its Garden Street tracks through the Village of East Cleveland, then adjoining the city on the east, through portions of said Village of East Cleveland; and, under this grant from the Village of East Cleveland, this Garden Street or Central Avenue extension of the "main line" of the East Cleveland Railroad Company was extended easterly from Willson Avenue in East Cleveland Township. This township long since became part of the City of Cleveland. (Record, page 190.)

VI.

EXTENSION OF 1873 IN ERIE STREET.

On March 25th, 1873 (Record, pages 199-200 and Map), the council, by resolution, granted to the East Cleveland Company the right to lay a double-track street railroad intersecting with its main line at Erie and Prospect streets; thence through Erie to Ohio Street, and through Ohio to Garden Street (now Central Avenue), connecting with the Garden Street extension at that point. This resolution was complied with, and the

Garden Street line thereby became an extension of the "main line" intersecting at Prospect and Erie Streets; running thence through Erie to Ohio Street; thence through Ohio to Garden Street; Garden to Baden Street; and Baden to Quincy Street. The company was required to operate said Garden Street line in connection with its "main line" and run its cars through Erie Street to Euclid Avenue; Euclid Avenue to and around the Public Square to Superior Street, and through Superior to Water Street; so that it is to be noted that the operation contemplated and required, with respect to the Garden Street extension, involved necessarily a portion of the "main line" from Erie Street westerly.

VII.

EXTENSION OF 1876.

In 1876 (Record, page 202, and Map following), the East Cleveland Company was authorized by the council, acting under section 2505 of the Revised Statutes, to extend its Garden Street tracks from their then terminus at Baden Street to Quincy Street, and along Quincy Street to New Street, and along New Street to Garden Street; and in and by this ordinance it is provided that the company is

> *"to equip and operate said extension for twenty years in connection with said branch and its main line, but with the express condition that no increase of fare shall be charged by said company on any part of its said branch or of its main line or of said extension by reason of said extension."*

It will here again be noted that the right and obligation to operate this Garden Street extension was made to continue with the "main line," portions of which "main line" it was required to use in such operation; and the period fixed for such operation is twenty years from May 23rd, 1876, or May 23rd, 1896.

VIII.

MAIN LINE RENEWAL OF 1879.

On September 15th, 1879, a general renewal of franchises was granted to the East Cleveland Company as respects its "main line" (See Record, page 204 and Map). This ordinance does not in terms specifically refer to the Garden Street extension. It does, however, describe a portion of the tracks over which the company was required to operate its Garden Street extension; hence it is apparent that, unless there is other legislation inconsistent with such construction, it must be held that this general renewal ordinance of 1879 included the operation of the Garden Street extension; and under this general renewal the company was authorized to operate the lines therein referred to until September 20th, 1904.

IX.

GARDEN STREET EXTENSION OF 1880.

On March 22nd, 1880, an ordinance was passed entitled:

> "An ordinance to permit The East Cleveland Railroad Company to extend the Garden Street branch of its railway."

(Record, page 208 and Map following.) The permission here granted is

> *"to extend the Garden Street branch of its railway from the present track at the intersection of Baden Street and Quincy Street in an easterly direction on and along said Quincy Street to the intersection of Lincoln Avenue, and to equip and operate the said extension and its Garden Street branch for the period of twenty-five years from and after the passage of this ordinance."*

It is to be observed that this is an ordinary provision for the extension of track, and provides, in legal effect, that the tracks as so extended may be operated for the period of twenty-five years from March 22nd, 1880; that is to say, to March 22nd, 1905.

It is to be noted that the general renewal ordinance of 1879 had extended the rights of the company to September 20th, 1904, and apparently this ordinance extends its right, as respects Garden Street, to a period six months later, namely: March 22nd, 1905; but it is apparent that at this time the rights for the "main line" and this extension expired substantially at the same time.

X.

EXTENSION OF 1885.

In 1885 (Record, page 211 and Map) the company was again authorized to extend the Garden Street branch of its railway from the intersection of Quincy Street and Lincoln Avenue in an easterly direction to Woodland Hills Avenue: the ordinance providing that such extension should be operated

> *"in connection with said branch and its main line, and terminating with the grant for the main line, but with the express condition that no increase of fare shall be charged by said company on any part of its main line or on said extension by reason of said extension."*

XI.

EXTENSION OF 1887.

In 1887 an ordinance was passed to permit the company to further extend the Garden Street branch (Record, page 217); in this instance the ordinance providing that the

extension should be

> *"from the intersection of its present track with Baden Street upon Garden Street in an easterly direction along and upon said Garden Street to the easterly line of Lincoln Avenue; and equip and operate said extension as a single or double track railroad, with all necessary switches, turnouts, and turn tables, as per plan on file in the office of the Board of Improvements, in connection with said branch and its main line, and terminating with the grant for the Garden Street main line."*

Here it is to be observed that the operation is to be an operation in connection with the "main line."

XII.

MAIN LINE EXTENDED TO JULY 13, 1913.

On July 13, 1888 (Record, page 219, and Map following), the council granted to the East Cleveland Company the right to change its motive power upon certain portions of its lines, including its "main line," to electric power, and in this ordinance it is provided that, in consideration of the large expenditure involved in such change and of the improved facilities to be afforded the public, the grant to the company upon its "main line" and its Cedar Avenue line shall be and continue in force for twenty-five years from and after the passage of said ordinance. This ordinance having been accepted and complied with by the East Cleveland company, *the expiration of the company's right to operate its main line was expressly extended to July* 13, 1913.

XIII.

GRANT TO USE ELECTRICITY IN GARDEN STREET.

On March 10, 1890 (Record, page *225* and Map), an ordinance was passed authorizing the substitution of electrical motive power upon the Garden Street extension; that is, upon this extension of the "main line," which had then been extended to July 13, 1913. In this ordinance it is provided that the right to operate the said Garden Street extension of said "main line" by electricity should continue during the term of the company's grant for the operation of tracks upon Garden Street. As already shown, it appears that the right to operate tracks upon Garden Street terminated at the same time with the right of the company to operate the "main line," of which Garden Street was an extension, and the right to operate the "main line" had been extended to July 13, 1913.

XIV.

GRANT IN GARDEN STREET EXTENDED TO TERMINATE WITH "MAIN LINE," JULY, 1913.

On March 30, 1891 (Record, page *227* and Map), the council passed an ordinance granting to the East Cleveland Railroad Company

> *"the right to construct and operate a second or additional track upon Central Avenue from the east line of Willson Avenue to the right of way of the Cleveland & Pittsburgh R. R. Co."*

This is an ordinance completing a double track system upon Garden Street, and, by section four thereof, it is provided:

> "4. *The right herein granted shall be valid until the expiration of the grants for the said company's main line.*"

The grants for the company's "main line" did not expire until

July 13, 1913; so that this last mentioned ordinance is an ordinance in express terms authorizing the operation upon Central Avenue to contiue

"until the expiration of the grants for the said company's main line."

XV.

GRANT IN GARDEN STREET DECLARED TO RUN UNTIL JULY 13TH, 1913.

On April 20, 1891 (Record, page 228 and Map), an ordinance was passed, entitled:

> "An ordinance to grant the East Cleveland Railroad Company permission to lay an additional or second track in Quincy street from New street to Woodland Hills avenue."

This route is part of the Central Avenue route and, with respect to the expiration of the grant to so operate the Garden or Central Avenue route as so extended, this ordinance provides, in section 3, as follows:

> *"The right herein granted shall be valid until the expiration of the grants for said company's tracks on said Quincy street east of Lincoln Avenue, to-wit: July 13, 1913."*

Here it is to be observed the council again expressly authorized the continuation of the operation of this Central Avenue extension until July 13, 1913, being the date of expiration of the "main line" of the company as hereinbefore shown.

XVI.

CONSOLIDATION FORMING APPELLANT.

In May, 1893, was made the consolidation making up the complainant company; and the council, acting under authority of statute, fixed the terms and conditions upon which

such consolidation might be made effective (Record, page 230 and Map following). The dates of expiration of the franchises of the companies entering into this consolidation were as follows: *The East Cleveland Railroad Company*, 1913; *The Broadway and Newburgh Street Railroad Company*, 1914; *The Brooklyn Street Railroad Company*, 1910; and *The South Side Street Railroad Company*, 1913. Under the terms and conditions of the consolidation as fixed by the council, the company was required thereafter to operate all of the lines as one entire system and to adopt a general system of transfers.

XVII.

PROVISION FOR CONTINUED OPERATION ON GARDEN STREET WITH MAIN LINE.

In July, 1893, following the consolidation just referred to, the council passed an ordinance (Record, page 232 and Map following), entitled:

> "An ordinance granting The Cleveland Electric Railway Company the right to extend and operate its double track street railroad in Prospect street from Erie street to Ontario street, and along certain parts of Seneca, Lake and Ontario streets."

This ordinance requires the company to comply with all the terms and conditions of the resolution of May 29, 1893, fixing the terms and conditions of the consolidation forming the complainant, and gives to the council the right to require the company to operate all of its cars over the entire length of any of the lines or extensions over the loop provided for. It also requires the company to operate night cars over the entire length of its line, an obligation not before imposed; also imposing upon the company the expense of sprinkling in addition to that required by existing ordinances; and obligating the company, in consideration of the grant, to agree that all the terms and provisions of the section relating to additional bur-

dens should apply to and be conditions of all the grants theretofore made by the council to the constituent companies or any of them. And in this ordinance it is provided (Sec. 6) that the grant therein made "*shall be in force until the 13th day of July, 1913.*" This ordinance relates to a portion of the line originally constructed as part of the Garden Street extension. It requires the operation of all the Garden Street cars over these tracks, so that in this ordinance the council legislated as to the operation of the tracks upon Garden Street and provided that such operation should continue until July 13, 1913.

XVIII.

CROSS-TOWN LINE REQUIRING OPERATION OF GARDEN STREET LINE UNTIL 1914.

On February 14, 1894 (Record, page 235, Map, page 238), an ordinance was passed establishing what is known as the cross-town line upon Willson Avenue. It is entitled:

> "An ordinance granting permission to The Cleveland Electric Railway Company and The Cleveland City Railway Company to extend their tracks in Willson Avenue."

By the terms of this ordinance, the companies were required to build and equip a double track, electric street railway along Willson Avenue from Broadway to the northerly terminus thereof. A portion of this road was to be built by The Cleveland City Railway Company and the other by the complainant company. By section five of this ordinance, it is provided that the operation of cars on said railway shall be under the control and regulation of the council; and by section six, in substance, it is provided that passengers on any car operated on any part of said Willson Avenue, upon the payment of one fare, shall be entitled to be transferred to any other line of either said The Cleveland Electric Railway Company or the Cleveland City Railway Company intersecting or coming to

Willson Avenue, and with the additional right to transfer from such second line to a car on any other line of the company operating the same which crosses the Cuyahoga River; and providing that passengers on any line of either of said companies intersecting or coming to Willson Avenue shall be entitled to transfer to Willson Avenue and have a continuous ride thereon.

By section ten of this ordinance, it is provided that this *grant shall be in force until the 1st day of July*, 1914.

The lines involved in this action intersected and crossed Willson Avenue at two points, so that, under the provisions of this ordinance, the railway company was obligated to operate this cross-town line and provide this system of transfers up to the first day of July, 1914, as respects all of the tracks involved in this action.

XIX.

OPERATION REQUIRED UNDER CONSOLIDATION.

Prior to the consolidation which formed the complainant, the various constituent companies operated independent lines of street railroad. There was little, if any, interchange of traffic between the roads, and the public were required, with few unimportant exceptions, in patronizing said lines and desiring to take passage on another line, to pay an extra fare. The council having, upon May 29, 1893, prescribed the terms and conditions upon which such consolidation might take place, and such terms and conditions having been accepted by the complainant, the complainant has, under the obligations of such action of the council, from that time to the present operated its lines as one system; only one fare being charged for a continuous ride on or over any line of railroad formerly owned by said constituent companies and any line of any other of said constituent companies within the limits of the city; and has also been required to give, and has given in its operation, transfers from one line to another for a single fare.

ERRORS ASSIGNED.

The appellant assigns as error,—

(1) It was error in said Circuit Court to adjudge and decree that the right of the complainant to operate its street railroad upon the street railroad route described in the ordinance of the City of Cleveland passed January 11th, 1904, expired on the 22nd of March, 1905.

(2) It was error in said Circuit Court to adjudge and decree that the right of the complainant to operate its street railroad upon the Central Avenue route in the bill of complaint described expired on the 22nd of March, 1905.

(3) It was error in said Circuit Court to refuse to adjudge and decree that the ordinance of January 11th, 1904, set forth in the bill of complaint, impaired the contract rights of the complainant with the City of Cleveland, in this respect: That whereas, complainant was by contract authorized to maintain and operate its Central Avenue street railway route until at least July 13th, 1913, said ordinance of January 11th, 1904, deprived the complainant of the exercise of such right, and undertook to terminate its right of operation of said Central Avenue route on the 22nd of March, 1905, and was therefore null and void.

(4) It was error in said Circuit Court to refuse to adjudge the ordinance of January 11th, 1904, set forth in the bill, void, because it was an ordinance purporting to renew to The Forest City Railway Company a grant which, at the time of said attempted renewal, belonged to the complainant.

(5) It was error in said Circuit Court to adjudge that one-half of the costs should be paid by the complainant.

Argument.

I.

THE CASE WAS PLAINLY WITHIN THE JURISDICTION OF THE CIRCUIT COURT.

Cleveland v. Cleveland City Ry. Co., 194 U. S. 517,
Cleveland v. Cleveland Electric Ry. Co., 201 U. S. 529.
City Ry. Co. v. Citizens Ry. Co., 166 U. S., 357.

II.

THE FACTS ALLEGED IN THE BILL ENTITLE APPELLANT TO RELIEF IN EQUITY.

Cleveland v. Cleveland City Ry. Co., supra,
Cleveland v. Cleveland Electric Ry. Co., supra,
Iron Mountain R. R. Co., v. Memphis, 96 Fed. 131,
Walla Walla v. Walla Walla Water Co., 172 U. S., 1 at 12.

If admission could add anything to the foregoing authorities on the subjects both of jurisdiction and equitable relief, it could be found in the cross-appeal with the assignments of error herein made by the appellees. (Record 283, 284).

III.

COMPREHENSIVE POWER CONFERRED UPON CITY COUNCILS BY OHIO STATUTES WITH RESPECT TO STREET RAILWAYS

By section 3443 of the Ohio Statutes it is provided,—

> "Council or the commissioners, as the case may be, shall have the power to fix the terms and conditions upon which such railways may be constructed, operated, extended and consolidated."

Speaking of the power conferred upon city councils by the Ohio Statutes, this Court, in *Cleveland v. Cleveland City Railway Co., supra,* say:

> "The statutes show that there was lodged by the legislature of Ohio in the municipal council of Cleveland comprehensive power to contract with street railway companies in respect to the terms and conditions upon which such roads might be constructed, operated, extended and consolidated; the only limitation upon the power being, that in case of an extension or a consolidation, no increase in the rate of fare should be allowed."

By section 2502 of the statutes there is a limitation upon the power of the council as to the period for which grants shall be made, and it is there provided:

> "No grant or renewal of any grant for the construction or operation of any street railroad shall be valid for a greater period than twenty-five years from the date of such grant or renewal."

By section 2501 it is provided:

> "The council may renew any such grant at its expiration upon such conditions as may be considered conducive to the public interest."

In *Cleveland v. Cleveland City Ry. Co., supra*, this Court, following the ruling of the Supreme Court of Ohio in *Hadden ex rel. v. East Cleveland R. R. Co.*, 6 Ohio Circuit Reports, held that the renewal power conferred by section 2501 may be exercised at any time prior to the expiration of the grant and upon a finding by the city council that its exercise is conducive to public interest.

EXTENSIONS OF TRACK.

Special provision is made by the Ohio statutes as to the power of the council to authorize the extension of existing tracks, and, by section 2505, it is in substance provided that:

> "The council of any city or village may grant permission by ordinance to any corporation, individual or company owning or having the right to construct any street railroad, to extend their track * * * in any street or streets where council may deem such extension beneficial to the public * * *."

Of this statute and the exercise of power thereunder by city councils, the Supreme Court of Ohio, in *Sims v. Street Railroad Co.*, 37 O. S. 556, say:

> "The exercise in good faith by the council of a city or village of the discretion vested in it by section 2505 of Revised Statutes (as corrected 77 Ohio Laws, 42), to grant permission to any corporation, company or individual, owning or having the right to construct a street railroad, to extend its track, where the council may deem such extension beneficial to the public, will not be interfered with by the court."

Again, it is also the rule that "an extension" within this section "may include construction across and at right angles to the original track," nor is it "necessary that the extension should begin at one of the termini or run in the general direction of the original route." *Belle v. Glenville*, 17 Circuit Court Decisions (27 Circuit Court Rep., 181.) Affirmed by the Supreme Court (73 Ohio State Rep., 392 and 397.)

It thus appears that the whole subject matter of the terms and conditions upon which street railroads may be constructed and extended, and their grants renewed, is committed by general legislation to the discretion of the city council as a continuing power, to be exercised from time to time as in the judgment of the council public interest so requires. The various grants to the appellant and its predecessors, involved in this cause, must be construed with reference to the fact that the whole subject matter is within the discretion of the council subject only to the limitations which we have pointed out. These statutes delegate to the city council a continuing power to authorize renewals and extensions and to fix the terms and conditions of such renewals and extensions; and, among the terms and conditions which the council may so fix, is the period of time during which the rights granted may be exercised, and the only limitation upon its power as to fixing such period of time is, that no grant shall extend for more than twenty-five years from its date. It of course follows that, within the limi-

tation of twenty-five years, the power is expressly delegated under these sections to the city council, not only to provide for the renewal of grants and extension of tracks of street railroads, but also to fix the time during which the road so extended may be operated.

IV.

CLAIM OF APPELLES.

By the ordinance of January, 1904, set forth in the bill, it has been attempted by the defendant city to grant to The Forest City Railway Company the right to take possession of the streets therein described now occupied by appellant, upon the claim on the part of the city, as in said ordinance recited, that the right to operate twelve miles of track, which is part of the general system operated by the appellant, expired on the 22nd of March, 1905. The basis of this claim is, that in 1880 the council passed an ordinance entitled:

> "An ordinance to permit the East Cleveland Railroad Company to extend the Garden street branch of its railway;"

in which ordinance it is provided that the company is authorized to extend the Garden street branch of its railroad from Baden street to Quincy street, along Quincy to the intersection of Lincoln avenue, and to equip and operate said extension and its Garden street branch for the period of twenty-five years from and after the passage of the ordinance. This ordinance, it is claimed, measures the right of appellant upon Garden street, and that, with the expiration of twenty-five years from March, 1880, its rights there terminated.

V.

CONTENTION OF APPELLANT.

The contention of the appellant is, that the whole his-

tory of the Garden street extension, as shown in ordinances set out in the bill, discloses an intention on the part of both the railroad company and the city council to make the right to operate in Central avenue, it being an extension of the main line of the East Cleveland Railroad Company, expire at the same time that the right to operate the "main line" of which it is an extension, shall expire; and that, by virtue of such ordinances, the complainant contends that the right to operate in Garden street did not expire on March 22, 1905, but that on the contrary, the complainant is entitled under its existing contracts with the city, to operate these lines as part of its entire system and in connection with its "main line" until July 1, 1914.

VI.

INTENT AS TO DATE ULTIMATELY FIXED FOR GRANTS IN QUESTION TO EXPIRE.

The court below held the date of expiration to be March 22, 1905 (Record 276). We believe the true intent as to date to be July 1, 1914. It is certainly either this date or July 13, 1913.

We maintain that all questions necessary to the solution of this difference as to date, that is, whether March, 1905, on the one hand, or July 1913 or 1914, on the other, were involved and decided in the cases of *Cleveland v. Cleveland City Ry. Co., supra*, and *Cleveland v. Cleveland Electric Ry. Co. supra*, and that those decisions must in consequence rule the present case. What we mean is, that the contractual elements and relations found to inhere in and to have been created by the local legislation there shown to have been passed and accepted, exist here. They relate to the same system of railway, the difference being only in *situs* of tracks and names of predecessors in title. The same disregard for contractual obligation prevails here that was exhibited there.

VII.

CONTRACTUAL INTENT AS TO 1913.

There are two features of fact which are essential to a right understanding of the present controversy. One is the "main line" of appellant's predecessor in title, the East Cleveland Railroad Company. The other is the precise relation between that "main line" and the tracks now in question.

MAIN LINE.

On February 28th, 1859, appellant's predecessor in title, the East Cleveland Railroad Company, was incorporated for the purpose of constructing and operating a railroad commencing at the intersection of Euclid and Newburgh roads at Doan's Corners in East Cleveland, and running thence westerly into the City of Cleveland and terminating at or near the southwesterly corner of the Public Square.

It will not be disputed that a railroad was constructed and put into operation between these termini. This road, as shown at pages 7, 8, 9, 10 of our statement, has ever since been operated and treated as the "main line" of appellant's predecessor, the East Cleveland Railroad Company. Without stopping to refer in detail to the local legislation on this subject, it will, we think, suffice to call attention to the "main line" as it existed when the motive power thereon was authorized to be changed from animal power to electricity. This "main line" as it then existed, is displayed in black and red double lines on a map opposite page 221 of the Record. On July 13, 1888, an ordinance was adopted permitting such change of motive power to be made on the portion of the "main line" which is displayed in double red lines on a map opposite page 221 of the Record. The ordinance was accepted (Record 221). On May 13, 1889, a resolution was adopted and accepted permitting such change of motive power to be made on the remainder of the "main line" (Record 222). This resolution was passed

in pursuance of the ordinance and made subject to its conditions. By the ordinance, the time during which the electrical equipment should be used, was fixed as follows (page 220):

> "Section 6. The privilege of constructing the electric system and the operation of its lines, as hereinbefore provided, is granted in consideration of the improved facilities hereby contemplated and the large expenditure necessary to secure the same, and shall be in force for a period of twenty-five years from and after the date of the passage of this ordinance upon its main and Cedar avenue lines * * *."

Thus we have the "main line" clearly established and identified; and it is quite as clear, too, that the intent of the council was to extend the term of grant of the "main line" to July 13, 1913. This intent is displayed alike by the ordinance and the resolution aforesaid to extend the "main line" grant to that date.

THE GARDEN STREET LINE (CENTRAL AVENUE) WAS AND IS AN EXTENSION OF THE MAIN LINE.

It was claimed in argument below that the Garden street line was an independent railroad of The East Cleveland Railroad Company and not an extension of its chartered line. That such is not the fact at once appears upon reference to the charter of the East Cleveland company. This charter (Record 259) describes the purpose of the corporation and the line proposed to be built as "*A railroad commencing at the intersection of the Euclid and Newburgh roads at Doan's Corners in said Township of East Cleveland, and running thence westerly to and into the City of Cleveland in said county of Cuyahoga and terminating at or near the southwesterly corner of the Public Square.*" This charter was taken out in 1850, and long prior to the construction of the Garden Street extension. This road had been located through Euclid avenue and Prospect street to the Public Square, and had been for many years in operation. It is therefore apparent that the chartered power

of the East Cleveland company to build a railroad between the termini fixed in its charter had been exercised and exhausted, and that such company, in 1868, under the terms of its charter, was not authorized to build any other railroad than the one which it had so located and constructed and was operating.

As the East Cleveland Company, then, had no chartered power in 1868 to build any such line as this Garden Street line as an independent railroad, we must look for some other source of power and ascertain under what power the construction of the Garden Street extension was made. An examination of the statutes of Ohio discloses that, in 1868, there was no statute authorizing an extension of a line by a street railroad company beyond its chartered termini, but that in 1869 an act was passed which has since become section 2505 of the Revised Statutes. Referring to this act, the Supreme Court of Ohio say, in *Sims v. Railroad Company*, 37 O. S. 568:

> "Up to this time there was no authority vested in the city council to allow street railroad companies to extend their tracks beyond the limits named in their certificate of incorporation. May 7th, 1869, an act supplementary to the act of March 27th, 1866, was passed which in terms authorized such an extension (66 O. L. 140). It reads as follows: 'It shall be lawful for the council of any city or incorporated village to grant permission by ordinance to any person or company owning or having the right to construct any street railroad, to extend their track on any street or streets where the said council shall deem such extension beneficial to the public.' * * *"

This grant of the Garden Sreet extension was made January 14th, 1868 (Record 188), and the extension was to be constructed within twelve months from the date of the grant. It is thus apparent that it was not contemplated that this extension would be built and in operation prior to January, 1869, and we find that on May 7th, 1869, the act of the

legislature just referred to, authorizing an extension beyond the termini named in the charter, was passed.

It is submitted that this act of 1869, authorizing such extension, is as well a ratification of what the council had done just prior to the passage of the act as authority for future action as prescribed in the statute.

The principle we here invoke was recognized by this court in *City Railway Co. v. Citizens Railroad Co.*, 166 U. S. 569. In this case the Court, speaking through Mr. Justice Brown, considered an objection made to the legality of an ordinance authorizing the use of electricity as a motive power, the validity of such ordinance having been attacked upon the ground that there was no legislation at the time of its passage authorizing the use of electricity. Replying to this criticism it is said:

> "At this time there was no law of the State permitting electricity to be used, and it is now claimed that the common council exceeded its powers in authorizing this change to be made. But it seems that, on March 3, 1891, a law was enacted by the general assembly declaring 'that any street or horse railroad heretofore or hereafter organized, may, with consent of the common council of the city, use electricity for motive power.' Conceding, although not deciding, that the city might have exceeded its lawful power in authorizing the change from animal power to electricity, in the absence of legislative authority so to do, we think the act of 1891 should be construed, not only as conferring a new authority upon the city, but as a ratification of what the city had already done in that direction. In view of the large expenditures incurred by the company upon the faith of this ordinance, it is ill becoming the city to set up its own want of power to make it, when such power was directly and explicitly given a few months thereafter."

So, we submit, as to the extension ordinance under which the Garden Street extension was constructed, that the city cannot now contend that such construction was made without authority, but that its legality must be recognized as authorized by the statute of 1869 to which we have referred, which operated as a ratification of what the city council had already done in the direction of authorizing this extension.

And, in passing, we call further attention to the fact that, in *Sims v Railroad Co. supra*, the Supreme Court of Ohio, construing this act of 1869 as to extension, held:

> "A street railroad corporation which owns or has the right to construct a street railroad within a city or village, may, with the permission of the council of such city or village, duly granted, extend its track beyond the termini named in the certificate of incorporation, subject to the provisions of section 2505 of the Revised Statutes as corrected 77 Ohio Laws, 42."

As the authority, then, of the act of 1869, authorizing extensions beyond the termini fixed in the charter, is the only authority which the East Cleveland company could have exercised in the construction of the Garden Street extension, it follows, we submit, necessarily, that the line of track which it so constructed was an extension of its chartered or "main line" within the provisions of the act of 1869. This line, then, upon Garden Street, having been so constructed as an extension of the "main line" under authority of legislative enactment pertaining to extensions of track, all of the subsequent legislative acts of the city to which reference is made in this case, providing for further extensions of the tracks so placed upon Garden Street, must be held to be the exercise, on the part of the council, of the power to authorize the extension of track under section 2505 of the statutes. And the whole course of legislation upon the subject plainly indicates that the council and company at all times understood the Garden Street tracks to be, and they were at all times treated as,

an extension of the "Main Line" of The East Cleveland Railroad Company. There was no sanction in law for their existence except as extensions of the "main line" of the company.

But, if there be still any question as to the correctness of the proposition for which we are contending, all doubt is set at rest when we refer to the action of the council in 1873. The original Garden Street extension intersected the "main line" at the corner of Prospect and Brownell streets. March 25th, 1873 (Record 199), the council authorized the East Cleveland Company *"to lay a double-track street railroad in Ohio Street from their present track to Brownell Street, to Erie Street, and in Erie Street from Ohio Street to Prospect Street, to connect with their main track at this point.*

And this same legislative act directed the company, on the completion of such tracks in Erie Street, to remove and abandon the tracks originally constructed in Brownell Street. By this legislation, the occupancy of Erie and Ohio streets is authorized to the East Cleveland company for the operation of a line upon Garden Street. This could only be done by the council in the exercise of the power of permitting extensions of track as authorized in section 2505. So that, whatever may have been true prior to 1873, at that time the Garden Street line became an extension of the "main line" and intersected the main line at Prospect and Erie streets. In view, then, of the situation at the time of the original construction of the Garden Street extension, and in view of the legislative action in 1873, taken under the express power of the statute permitting an extension of tracks, no one can now be heard to say that the Garden Street line is anything other that an extension of the "main line" of the East Cleveland company.

In addition to these considerations, as already appears from the statement of facts in this brief, the council has uniformly, in all of its legislation, treated the Garden Street line

as an extension of the "main line," and has legislated for its operation in connection with the "main line." And there is not found in the Record any foundation at all for the claim that the Garden Street line has at any time been anything other than an extension of the "main line" of the company.

GARDEN STREET EXTENSION.

The facts embraced in what is known as the Garden street (now Central avenue) branch or extension are the tracks in dispute in the present case. It is important to ascertain the precise physical relation between this so-called branch and the "main line" above pointed out. On January 14, 1868, the council adopted certain preambles and resolutions reciting, in substance, that appellant's predecessor had applied for leave to construct a street railroad from the intersection of Prospect and Brownell streets *"to connect with the main line of its railroad;"* thence along Brownell and Garden streets to Willson avenue and the east boundary of the city; also that the company had filed certain consents of property holders and a bid to carry passengers at the lowest rates of fare. It was then resolved to permit appellant's predecessor to lay and operate tracks along the streets for a period of twenty years, and also, as part of such branch, *"to use and occupy the streets, avenues and public grounds over which its main line is now constructed and operated, westerly from the junction of said road with the main line to its westerly terminus."* (Record 188). Two days later, the company accepted the foregoing in these words: *"hereby accept the grants and permits to construct and operate a street railroad from its main track in Prospect street, etc."* (Record 188).

As before stated, when this action was taken, there was no express statutory power in municipalities to grant the right to construct extensions of street railroads. That power was not given until the year following, May 7, 1869 (66 Ohio

Laws, 140). It will be observed, however, from the language used in the legislation above alluded to, and from the physical connection between the main line and the so-called branch, that the latter was, in truth and in fact, *an extension* of the main line.

Furthermore, as we have shown, on March 25, 1873, the council granted to appellant's predecessor the right to change the connection between its main line and the so-called Garden street branch, by laying double-tracks connecting with the main line at the intersection of Erie and Prospect streets and continuing through Ohio street to Garden street, and requiring it to thereupon remove the old connection at Brownell street (Record 199). This was accepted (Record 200), and the new connection is shown on the plat opposite page 200 of the Record, the double red lines showing the new portion and the single blue lines, in Brownell street, the removed portion. On the same date, March 25th, 1873, the council granted appellant's predecessor permission to lay a second or double-track on Garden street between Brownell and Willson avenue, which also was accepted (Record 200). This additional track is shown in red, parallel with the old track shown in blue on the plat last mentioned.

There can be no question but that these resolutions authorizing the change of connection between the main line and the Garden street branch and the extension in Garden street aforesaid, were authorized and adopted under the statute above cited vesting express power in municipalities to grant the right to make street railroad extensions. It is not important, therefore, further to consider the origin of the Garden street branch, for, as early as 1873, it indisputably became *an extension* of the "main line," and is to be treated precisely the same as if it had been originally constructed in pursuance of express power to authorize extensions to be made.

It is to be observed that the local legislation before alluded to, authorizing the motive power to be changed along

the "main line" did not include the Garden street branch or extension. It is scarcely important enough to state, but the fact is, that the omission was due to the experimental stage of the new motive power at the time of the change along the "main line" and the Cedar avenue branch was permitted, the latter being included only because the power house happened to be located thereon. On March 10th, 1890, the right was given by ordinance to change the motive power along the Garden street extension to electricity (Record 225 and Map opposite, p. 226). This right was in terms to continue *"during the term of its present grant for said Garden street branch."* (Record 225, Sec. 1). It is here, we think, the confusion arose in the court below. It was thought and held that this Garden street extension of the "main line" was something distinct from the "main line," especially in the duration of the right to maintain and operate the extension. We believe the cause of this confusion to have been a failure to observe and give effect to *all* the local legislation bearing upon the extension of time for the grants of the main line and the Garden street extension.

RENEWAL OF 1879.

On September 15th, 1879, the council renewed the franchise of appellant's predecessor along certain streets for a period of twenty-five years (Record 204). Section 1 of that ordinance included that portion of Garden street extension which lies west of the intersection of Erie and Prospect streets and extends over certain streets mentioned in the original establishment of the branch to the business center of the city at the Public Square. The effect of this renewal was consequently to renew a material portion of the Garden street extension. The only alternative of this would be to exclude that portion from the Garden street extension, which would obviously be doing violence to the intention of the parties.

GARDEN STREET RENEWAL OF 1880.

Again, on March 22nd, 1880, the council in terms granted authority to appellant's predecessor to extend its Garden street branch from Baden avenue and Quincy street eastwardly along Quincy to Lincoln avenue, and to *"equip and operate the said extension and its Garden street branch for the period of twenty-five years."* This was made subject to a condition that no increase of fare shall be charged by said company on any part of its said branch or its *"main line" or of said extension by reason of said extension."* (Record 208). We may say, in passing, that this is the ordinance which was litigated in *Hadden ex rel. v. East Cleveland R. R. Co.*, 6 O. C. C. Rep. 318, and affirmed by the Supreme Court of Ohio and approved by this court both *in Cleveland v. Cleveland City Ry. Co.*, and *Cleveland v. Cleveland Electric Ry., supra.* This, too, is the ordinance which the court below held determined appellant's rights.

The effect of these two renewal ordinances, the one relating to the "main line," passed September 25th, 1879, and the one relating to the Garden street extension of March 22nd, 1880, was to extend the terms of all the grants involved, first, to September 20th, 1904, and, second, to March 22nd, 1905, a difference in time of only six months.

ORDINANCE UNIFYING TIMES OF EXPIRATION OF MAIN LINE AND GARDEN STREET EXTENSION.

On February 9th, 1885, an ordinance was passed and accepted empowering appellant's predecessor to extend its Garden street branch from Quincy street and Lincoln avenue along Quincy street to Woodland Hills avenue and to *"equip and operate said extension as a single track railroad with all necessary switches, turn-outs and turn-tables, in connection with*

said branch and its 'main line,' and terminating with the grant for the 'main line.'" The council is here dealing with the subject-matter of the future operation of both the "main line" and the Garden street extension of the "main line;" and, by express provision, this ordinance makes the Garden street extension and the "main line" grant expire at the same date.

This ordinance furnishes conclusive evidence of the intent of council to make the grants for the extensions of the "main line" expire with the grant for the "main line," and so to conserve the joint operation of the "main line" and the extension during the same period of time ,and in order to accomplish this express intention the ordinance under discussion, required, on the part of the railway company, a concession of a few months in the matter of the expiration of its then existing branch upon the Garden street extention, to-wit: a reduction in time of about six months. The ordinances reduce the term of the Garden street extension, which, by ordinance of 1880, expired March 22nd, 1905, to make the grant for such extension expire with the "main line" grant on September 20th, 1904; and, without the consent of the railway company, it would not in this respect have been valid. But, as the record shows (p. 211), the railway company, willing to co-operate in this declared policy of the council to make the extension and "main line" grants expire at the same date, duly accepted this ordinance. So that, by express agreement in 1885, the railway company and the city agree that the Garden street extension shall be operated with the "main line," and its grant for such operation shall expire with the grant for the "main line;" and, as we proceed with our discussion, we shall see that from this time on this declared policy of the council to make the Garden street extension and the "main line" expire at the same date, is consistently followed in every legislative act of the council thereafter in dealing with the subject-matter.

ORDINANCES EXPRESSLY EXTENDING TERM OF GARDEN STREET EXTENSION SO AS TO EXPIRE WITH GRANT FOR MAIN LINE.

As already shown, the grant for the "main line" was by council in 1888 extended to expire July 13th, 1913, and, as we have just pointed out, by ordinance of February, 1885, the grants for the "main line" and the Garden street line were made to expire at the same date, to-wit: September, 1904.

We now direct attention to legislation beginning in March, 1891, from which clearly appears the intention of council again to make the grants for the Garden street extension expire at the same time as the grant for the "main line," namely, July 13th, 1913. This intention is evidenced by express provision of ordinances.

On March 30th, 1891, the council passed an ordinance granting to appellant's predecessor the right to place an additional track in Central avenue, so as to complete a double-track system upon the Garden street line (Record 227 and Map opposite thereto). By section 4 of that ordinance, the right to operate the double-track line so authorized was declared to be *"until the expiration of the grants for the said company's 'main line.'"*

Again, on April 20th, 1891, the council granted to appellant's predecessor the right to lay an additional track on a portion of the Garden street extension in Quincy street (Record 228 and Map immediately following). In section 3 of the ordinance, it was provided that:

> "The right herein granted shall be valid until the expiration of the grants for said company's tracks on said Quincy street east of Lincoln avenue, to-wit: July 13th, 1913."

The first of these last two ordinances required no formal acceptance. The last one did, and was accepted April 23rd, 1891 (Record 228).

The intent of the council expressed in the two ordinances last referred to is clear and unmistakable. It is expressed in language free from any ambiguity; and such ordinances do in express terms provide for and authorize the continued operation of the Garden street extension in connection with the "main line" until the expiration of the grant for the "main line" in July, 1913.

We might well rest this argument upon these two ordinances. The court below decreed that the right to operate the Garden street extension expired in March, 1905. By these ordinances, the city council, in 1891, declare and provide in express terms that the company's rights upon Garden street shall not expire until July 13th, 1913.

But we pass to the discussion of other legislative acts which further elucidate and confirm this clearly expressed intention of the city council.

VIII.

INTENT AS DISCLOSED BY COUNCIL'S CONSENT TO CONSOLIDATION AND ITS ORDINANCE PASSED A MONTH LATER.

The action of council in fixing the terms and conditions of consolidation further evidences the council's intention to extend the grant of the Garden Street extension. On May 29th, 1893, the city council consented to, and fixed the terms and conditions of consolidation of four companies under the name of appellant (Record, page 230 and second Map following). One of these constituent companies was the East Cleveland Railroad Company, then owning and operating the Garden Street extension in connection with its "main line" aforesaid. One of the conditions was to reduce the rates of fare by requiring transfers to be given to and from the several consolidated lines. Another condition was that the con-

solidated company should accept the terms and conditions and agree to perform them, which it did on the same date (Record, page 231). This, of course, compelled the company to operate all the lines as a single system. The dates of expiration of the grants of these companies were as follows: The East Cleveland Railroad Company, 1913; The Broadway & Newburgh Street Railroad Company, 1914; The Brooklyn Street Railroad Company, 1910, and the South Side Street Railroad Company, 1913.

We maintain that the obligation of appellant to operate this consolidated system as an entirety was necessarily accompanied by a corresponding right to do so for the period of the longest grant involved. As if to emphasize this, the company accepted another ordinance, passed July 17th, 1893, permitting it to extend tracks on a number of streets, requiring it to comply with the terms and conditions of consolidation aforesaid; also to operate all of its cars as council might require over the entire length of its various lines and extensions and over a loop provided for; requiring it to operate night cars, an obligation not before imposed; obliging the company, too, in consideration of the grant, to agree that the terms and provisions of the section relating to addition of burdens should apply and be conditions of all the grants theretofore made by the council to the constituent companies or any of them. It was further provided (Sec. 6):

> "This grant shall be in force until the 13th day of July, 1913." (See Record, pages 232-234.)

Manifestly, many new obligations were here imposed and accepted which applied to all of the lines of appellant, including the Garden Street extension. Could anything be clearer, either, than the intention to extend all the grants to a common period, July 13th, 1913?

IX.

CONTRACTUAL INTENT AS TO 1914 AS DISCLOSED BY WILLSON AVENUE CROSS-TOWN ORDINANCE EXTENDING ALL GRANTS TO 1914.

It may be thought not to be important to consider whether the tracks in question are held under a grant extending beyond July 13th, 1913, because that alone would require a reversal of the decree below; but obviously that would not conclude the litigation. When the case of *Cleveland v. Cleveland Electric Ry. supra*, was decided last April, the Court declined to pass upon the question then sought to be raised concerning extensions of grants to 1913 and 1914; but the case, as then presented, differed from the present controversy. The ordinance in that case renewing the present appellant's Woodland Avenue grant to The Forest City Railway Company was based upon the assumption of the city council that the grant expired in 1904. The court below held that it did not expire prior to 1908, and that it was unnecessary to inquire as to 1913 and 1914. The affirmance by this Court was sufficient to dispose of the appeal of the city and its grantee.

But the court below holding here that the grant in question expired in March, 1905, it can make no difference that it also held the renewal ordinance to The Forest City Company to be void, because that ruling, if affirmed, would enable the city, by appropriate legislation, to dispossess the appellant and let the streets out under a new grant. It would, therefore, not be enough in this case, merely to hold that the grant in question did not expire in March, 1905; it would be necessary to determine the date on which the grant will expire. Under all the legislation adduced in evidence, interpretation as to ultimate contractual intent is the only way to test the correctness of the date of expiration adopted by the court below in comparison with the other and later dates fixed by the same council. Indeed, no test can be made of the correctness of the date named in the decree without determining what the true date is.

WILLSON AVENUE CROSS-TOWN LINE ORDINANCE.

As was said by Mr. Justice McKenna, in *Cleveland v. Cleveland Electric Ry., supra,* "THE SITUATION MUST BE KEPT IN MIND." At the time the Willson Avenue cross-town line was provided for and built under the ordinance of February, 1894, the situation was this:

The Cleveland Electric Railway Company was operating a system of railroad known as the East Cleveland lines, including the Garden Street extension involved in this cause; substantially all of its lines intersecting and crossing Willson Avenue. It was also operating the Broadway & Newburgh lines, extending from Newburgh, the manufacturing center of the southern portion of the city, and, as well, the South Side, Wade Park Avenue and Cedar Avenue lines. The Cleveland City Railway Company was operating lines upon St. Clair Street, Superior Street, Woodland Avenue, and also upon the West Side. None of the grants of the Cleveland City Railway Company expired before January, 1908, and none of the grants of the lines of the complainant company expired prior to 1910; and, as respects the Broadway & Newburgh line, its grant did not expire until July, 1914. There was at that time no street railroad service enabling citizens to travel across the city from Newburgh, a manufacturing center, to the Lake shore on the north, also a center of manufacturing industry; and the purpose of the council was to establish a cross-town service upon Willson Avenue which should accommodate a public demand for such service as should enable passengers to travel from the southern to the northern part of the city. And this object it was sought to accomplish by furnishing a line to be operated by the existing companies giving transfers to and from Willson Avenue, so that persons going to Willson Avenue could be transferred to that line, and passengers from Willson Avenue could be transferred, without ex-

tra charge, to any line of the city coming to Willson Avenue, and to secure a second transfer to another line. In order to accomplish this purpose, which confessedly would be one of great public service and benefit, it was necessary that the two companies should unite in a contract in reference to the operation of this line, and of course it was necessary to provide as to the duration of operation; that is, it was necessary to provide in the contract for how long a time the companies should continue to operate this line upon the terms and conditions of the ordinance. The council might have provided that this ordinance should expire and the obligations of the companies terminate in March, 1905. It might have provided for its termination in 1908. It was competent for it to provide any length of time which, in its judgment, was proper, not exceeding twenty-five years; but the period must necessarily be one which would induce the railroad companies to make the large expenditure necessary to execute the proposed purpose. It did determine that the grant should be in force until the 1st day of July, 1914. This grant having been accepted by both of the companies involved, it thereby became a contract binding both upon the city and the companies. If, upon looking into the terms of this contract, it is apparent that it could not be complied with by The Cleveland Electric Railway Company with respect to its Garden Street and Quincy Street lines unless it was permitted to continue the operation of such lines until July, 1st, 1914, then it becomes apparent that the effect of this contract, with its obligations upon the complainant and a corresponding right in the complainant, is such that it is required to operate its system until 1914, and if the council has made a contract with the appellant, the performance of which, upon its part, requires the operation of the system until 1914, it cannot be successfully contended that the city can terminate its right at any date prior to July 1st, 1914. We then inquire,—

WHAT OBLIGATIONS ARE IMPOSED UPON THE CLEVELAND ELECTRIC RAILWAY COMPANY BY THIS WILLSON AVENUE ORDINANCE?

(a) It is required to jointly construct and maintain the tracks, wires, poles, et cetera.

(b) It is required to run through cars on said Willson Avenue between Broadway and the northerly terminus of said avenue, at such intervals of time as the council may require.

(c) It is required to so operate the road with respect to fare that, on payment of one fare, either in cash or a ticket, any passenger shall be entitled, without extra charge, to be transferred to any of the other lines of the company intersecting or coming to Willson Avenue, and have a continuous ride thereon, without additional charge, and, without additional charge, to be transferred from such second line to any other line of the company operating the same which crosses the Cuyahoga River.

(d) It is also required to transfer passengers to Willson Avenue from any of its lines coming to Willson Avenue, without extra charge.

What, then, was the obligation of The Cleveland Electric Railway Company upon its acceptance of this Willson Avenue ordinance, and what were its rights as to operation thereunder? Whatever the obligations and rights were, they were continuing until the 1st of July, 1914, and among them so continuing to July, 1914, was the duty to transfer from Willson Avenue over its entire system of lines, and the further requirement to transfer to Willson Avenue from all of its lines coming to Willson Avenue from other parts of the city. If the right to operate upon Garden Street, which intersects Willson Avenue, terminates at any date prior to July 1st, 1914, from such date it would no longer be possible for the com-

pany to comply with the conditions of this Willson Avenue ordinance. It could not thereafter transfer passengers from Willson Avenue to its Garden Street and Quincy Street lines. It could not thereafter bring passengers over its Garden and Quincy Street lines and transfer them to Willson Avenue. In other words, by the express provisions of this ordinance, the City of Cleveland and The Cleveland Electric Railway Company have contracted that, up to the first of July, 1914, the company shall operate and furnish to the public a service which necessarily involves the use by it, during all of that period, of its system of railway in the City of Cleveland, including the Garden Street extension; and, upon the faith of this contract, the companies have constructed, at very large expense, this Willson Avenue line; the system of transfers and car service has been inauguarted; and the people of Cleveland have, since 1894, received and are now receiving, the benefit of the contract made with reference to this cross-town line. It is not within the power of the city council to impair this contract. It is not within its power to make impossible its performance by the appellant, and necessarily the legal effect of this contract of 1894 was not only to grant to The Cleveland Electric Railway Company the right to continue the operation of its lines to July 1st, 1914, but was to require of it, in contract obligation, that it would so operate its system of street railway. Can it be questioned that, by reason of this contract, the appellant has the right to continue the operation of the Garden Street lines which intersect Willson Avenue, and without the continued operation of which it cannot perform the conditions of the contract of 1894?

With due respect to the learned court below, we submit that the summary manner in which this contention is disposed of in the opinion fails to meet the case. It is said in the opinion (Record, page 76):

> "It is true that, under the provisions of section 6, it is made the duty of the complainant to transfer

> passengers to its Garden street line, but the council could not have intended by so requiring that such transfers be made by the complainant, when the complainant had no Garden Street line, and if it had so intended and had so declared, it would have been invalid."

With due deference, we suggest that the comment of the learned Judge begs the question under discussion; nor is it true, as suggested, that the council was without power to provide for a cross-town line which should involve the operation of the entire system until 1914. On the contrary, as has already been ruled by this Court, the council possessed "comprehensive power" to fix the terms and conditions upon which street railroads might be constructed, operated, extended and consolidated. It was in the exercise of this power that the council provided for the construction of the Willson Avenue cross-town line. It was in the exercise of this power that the council imposed conditions and made requirements with respect to the operation of this cross-town line which necessarily involved the use by the appellant company, until 1914, of its Garden Street extension tracks in order to fulfill the requirements made and exercise the right granted by the ordinance. It is no answer, as suggested by the court below, that the company would be excused from the performance of these conditions upon showing that its Garden Street extension grant had expired. The very inducement and consideration moving to the company to make the expenditure involved was to gain the right to continue the operation of its Garden Street extension, as well as its other lines, for and during the extended period of time. Manifestly, the consideration inducing the railroad companies to build the cross-town line was the right conferred to operate it in connection with its system intersecting the cross-town line.

The chief value of the cross-town line, both to the public and the railroad company, is its operation in connection with the east and west lines of the city; it would otherwise be un-

profitable and of little public utility; hence, it was not only within the power of council to provide, but the exercise of a wise public policy to provide, for the operation of this line until 1914, in connection with all the east and west lines of the system. We submit that, the city having entered into this contract and induced the investment of capital upon the faith of it, and the public having received for these many years the benefit thereof, it is now too late for the city to assert that the contract does not mean what it says in express terms, namely, that the rights and duties involved in the grant so made shall continue until July 1st, 1914.

X.

COMPARISON OF DATES OF EXPIRATION RESPECTING THE SUPPORT THEY DERIVE FROM ALL THE FOREGOING LEGISLATION.

The court below contented itself with two unique theories. It thought that the ordinance passed March 22nd, 1880, permitting appellant's predecessor to extend the Garden Street branch along Quincy street, and

> *"to equip and operate the said extension and the Garden street branch for the period of twenty-five (25) years from and after the passage of the ordinance,"*

was, in spite of all the other acts of council, enough to show that there was no intent to extend the grant further. (See opinion, Record, pages 72-76.) The court next thought that the nature of the power to extend tracks forbade the right to extend the term of the grant therefor beyond the term of the grant previously fixed for operating the tracks designed to be extended. It failed to consider both the power to extend tracks and the power to renew, and so extend the term for operating tracks designed to be prolonged or extended. (See Record, page 76 *et seq.*)

Indeed, the court below overlooked another source of power which resided in the council to deal with the company's main line and this Garden Street extension. Additional to the renewal power was, as before pointed out, the power under section 3443 of the Ohio Revised Statutes

> *"to fix the terms and conditions upon which such railways may be constructed, operated, extended and consolidated."*

The theory of the court below was, as we understand it, that when the council authorized an extension of tracks of the Garden Street extension, it could not, although it confessedly attempted to, fix the term of the grant beyond the date theretofore fixed for the expiration of the grant of the main line. It is not difficult to perceive why, in the exercise of the power alone to extend tracks of an old line, the period of time for operating such new or extended tracks could not exceed the time limiting the grant of the old line. It must have been in this view only that the court below could have indulged in the reasoning and have reached the conclusion stated in this behalf in its opinion; but a moment's reflection will reveal to any one that a city council, possessing two or more sources of power respecting a given subject-matter, may exercise all of them in dealing with the subject. Here were three powers vested in the council. One was to extend the tracks of an old line. Another was to renew the grant of the old line for any period not exceeding twenty-five years. Still another was, as just stated, to fix the terms and conditions upon which any railway tracks may be constructed, operated or extended. There is no language to be found in any statute of Ohio prescribing either mode or particular words to be followed or used in the exercise of any one or all of these three sources of power. Now, when the council, as we have pointed out in our statement of fact and also in this brief, authorized extensions of tracks to be made, for instance, in 1891, in certain streets embraced in the Garden street extension, for the pur-

pose of completing a double track system, it did not content itself with merely sanctioning the construction and operation of those particular portions of track; it also expressly went further and made very important provisions. In the first place, it dealt with the subject of operation, both of the new extension tracks and of the rest of the Garden Street extension itself. It went still further. It declared, in substance and effect, that the newly double-tracked extension should be used and operated in connection with the main line, and it declared that this should continue throughout the life of not merely one, but of all the company's grants for the "main line." It will not do, therefore, to shut our eyes to these other subjects additional to the single subject of permitting extension rails or tracks to be laid. No consideration of such a subject can be said to be complete or sound which does not embrace all of the matters then plainly and clearly treated by the legislative body.

Further to illustrate our meaning with respect to the omission of the court below to consider and give effect to all the subjects before the council, we beg to call attention to the fact that the ordinance of March 22nd, 1880, which the court below held determined appellant's rights, is an ordinance providing for an extension of track upon Garden Street, and, as well, providing for the continued operation of the line as extended under the terms of the ordinance, and providing that such operation of the tracks so extended may continue for twenty-five years. Clearly, if the learned court below was right, such ordinance would be inoperative to extend the grant, because it was an ordinance relating to extension of track, and in which the council was exercising the power to authorize an extension of track; and yet this track extension ordinance was held by the Supreme Court of Ohio to be a legal exercise of power and operative to extend the grant for twenty-five years. The intention of council to deal with the subject-matter of the continued operation of the Garden Street extension in connection with the "main line" is no more clearly expressed in

the ordinance of 1880 than in the ordinances of 1891. In all of these ordinances, the council is exercising the right to fix the terms and conditions upon which railroads may be constructed and operated and their grants renewed, as well as authority to provide for the extension of an existing track.

It is hard to reconcile the opinion of the court below, conceding, as it does, the exercise by the council, when adopting the ordinance of 1880, of its power to extend tracks and its power to prolong the grant for twenty-five years, with the court's denial of such exercise of dual powers by the council when it adopted the ordinances of 1891. As the ordinance of 1880 extended the grant for twenty-five years, so the ordinances of 1891, in language equally clear, extended the period during which the Garden Street extension may be operated so that such operation may continue during the life of the grant for the "main line."

THE VIEW EXPRESSED BY THE COURT BELOW AS TO "TRACK EXTENSIONS" IS IRRELEVANT. EXTENSIONS HERE INVOLVED WERE EXTENSIONS OF THE "MAIN LINE" AND DID NOT EXTEND THE GRANT FOR SUCH "MAIN LINE," BUT EXPIRED AT THE SAME TIME.

It is to be observed, too, that the theory of the court below to the effect that a new grant to extend tracks could not survive the expiration of the old grant is totally irrelevant here, because the grant of the "main line" had been, in 1888, extended in point of time until July 13th, 1913; hence the council did not attempt, when declaring that the grants involved in its legislation of 1891 respecting the Garden Street extension, to prolong those grants beyond the life of the grant of the main line; it merely sought to give to the Garden Street extension the same period of duration that it had already

fixed for the "main line." So that, even assuming the correctness of the court's holding below, that a grant with reference to an extension of track cannot be made for a longer duration than the existing grant of the track which is extended, the court fell into most manifest error in holding that, by reason of this rule, the ordinances of 1891 were inoperative to accomplish that which in express terms the council thereby attempted to accomplish, namely, to provide that the extension therein authorized should expire with the grant for the "main line"; because here council were providing for an extension of the main line of the East Cleveland Company. The grant for the "main line" did not expire until 1913, and, as respects the extension of this "main line," it is provided that such extension shall expire at the same time as the "main line" which is so extended. And that which the council did in 1891, even within the principle announced by the court below, was a valid exercise of conceded power. Furthermore, as said in one of the briefs we filed in the case decided in this Court last April (*Cleveland v. Cleveland Electric Ry.*), the distinguished judge, like our learned adversaries, overlooked the obvious distinction between the purpose of language employed by council, where, on the one hand, it is used only to fix the term of an extension of grant, and where, on the other hand, it is used not only for that purpose, but also in connection with other language showing a purpose to prolong the term of the original grant. It simply begs the question of whether there has been an extension of the term of an old grant, to say that an extension of old tracks cannot be authorized for a longer term than that of the old grant. If the thing done and the end sought by it cannot be accomplished without exercising the power of renewal, then that power is inevitably exerted; for otherwise one must hold an act done to be invalid in the presence of plenary power to perform it. This is especially true of the renewal power, which has no mode prescribed for its exercise. (See last sentence of section 2501 and midway of section 2502 of the Ohio

Revised Statutes as quoted in *Cleveland v. Cleveland City Ry.*, 194 U. S., at page 532.)

We may, we think, with propriety, refer to language used by District Judge Wing in the case of *Cleveland v. Cleveland Electric Ry., supra,* when that case was determined by him in the court below, for it shows that that judge did consider all the sources of power residing in the council. He said:

> "In the contemplation of the parties to this contract, did the time during which the mutual obligations therein assumed were to continue, end in August, 1904, or in February, 1908? So far as the West Side Street Railroad Company was a party to the contract, it became obligated to carry passengers from Gordon Avenue to the eastern terminus of the Woodland Avenue line throughout the term of its franchise. The consolidated company assumed this obligation. *It follows that there was necessarily granted to the consolidated company a right to do the thing which it had obligated itself to do.* (Italics ours.)

But, what is much more to the point is, that when that case reached this court, all the objections and arguments on the part of the court below in the present case, were overthrown. This Court found, from legislation of striking similarity to that adduced here, an intent to extend a shorter grant to the date fixed for the expiration of a longer grant, and also that there was power in the council to carry such intent into execution. Said Mr. Justice McKenna, at page 542, in respect of an Ohio decision there cited,—

> "Appellants concede the authority of that case, but say that the ordinance it passed upon left no doubt of the intention of the city, whereas in the case at bar, considering the provisions of the statutes and ordinances, all intendments must be held to be against an intention to renew the original grant. In other words, the contention is that while 'no set form of words is necessary,' it is yet urged that 'such result can only be effected by apt words evincing a plain

> and unmistakable purpose to make a renewal.' It is not a question of power, therefore, to pass the ordinances, but of the intention of the city in passing them, and the latter we have sufficiently considered."

Can it be, then, that any decision is sound which, like that of the court below, ignores the rules of interpretation as indulged by this Court respecting local legislation, and also the powers found by this Court to reside in the local legislative body?

Let us pursue this a step further. The ordinances passed subsequent to the renewal ordinance of the Garden street extension on March 22nd, 1880, are of the utmost significance, and yet we think it is not too much respectfully to say that they were refined and frittered away in the court below. To illustrate: the ordinance of March 30th, 1891, providing for the extension and operation of a double-track along the Garden Street extension, ordained that the right so granted should continue "*until the expiration of the grants for the said company's main line.*" (Record, page 227.) And one month later, April 20th, 1891, the council empowered the company to place and operate an additional track and so complete a double-track in Quincy Street; and the council further provided that this right to operate should continue

> "*until the expiration of the grants for said company's tracks on said Quincy street east of Lincoln avenue, to-wit: July 13th, 1913.*" (Record, page 228.)

Again, after consenting to the consolidation and so uniting companies having grants expiring at different times, as before stated, and requiring and imposing conditions looking to a continuous operation of those lines as an entirety throughout the life of the longest term involved, the council passed, and the company accepted, another ordinance imposing still further and more drastic conditions than those embraced in the consent to the consolidation, and then expressly declared that the "*grant shall be in force until the 13th day of July, 1913.*" (Record, pages 232-234, Sec. 6.)

Still again, on February 19th, 1894, the Willson Avenue cross-town line was agreed upon by the odinance which, as before shown, in terms exacted the performance of obligations by the grantee companies which could not be done until the longest grant applicable to any of the lines intersecting the cross-town lines had expired; and to show that the council intended this to be done, it expressly provided that the grant should be *"in force until the 1st day of July, 1914."* (Record, page 237.) This is in exact harmony with the manifest purpose of the consent which the council had theretofore given to the consolidation resulting in the formation of the appellant.

What, then, is fairly deducible from this summing up of purposes in connection with the dates fixed, limiting their period of accomplishment? Necessarily 1905 must be excluded altogether, for there are manifestly too many instances of extensions of grants to admit of serious debate as to that year. The only dates remaining are 1913 and 1914. When we consider the scope and object of all the obligations which the companies undertook to perform, it seems to us clear that the date fixed for the expiration of the longest grant, July 1st, 1914, is necessary to the full accomplishment of the ultimate contractual intention of both the city and the companies.

We shall be aided here by employing language of this Court in respect of the purpose of council when legislating in reference to two lines having grants terminating at different periods. As there said by Mr. Justice McKenna (*Cleveland v. Cleveland Electric Ry., supra,* at page 538):

> "Indeed, we think it is clear that the city intended to secure, and did secure for its citizens, valuable transportation facilities and intended to extend that part of the system of railways consisting of the Kinsman street line and its extensions until February, 1908. There can be no other reasonable meaning of what the city did or of the language it used; it recognized the main line, not in one or-

dinance, but in many ordinances, and the purpose was to join the initial grant and its extensions together, and continue it and those combined until 1908. There could have been no mistake in the language used or misunderstanding of it. We might suppose a mistake in one ordinance, but we cannot suppose a mistake in four ordinances. The matters dealt with were important, and it is a reasonable presumption that no provision concerning them escaped attention or was misunderstood. The situation must be kept in mind. The Woodland Avenue Railway Company (successor to the right of the Kinsman street company) operated a road on the east side of the Cuyahoga River. The West Side Railroad Company operated on the West side. They were independent companies and the interchange of traffic between them was obviously a public advantage. This was accomplished by the consolidation of the companies and the ordinance fixing the terms and conditions of the consolidation. By that ordinance, through cars were provided for and a single fare was established 'from any point to any point on the lines and branches of the consolidated road.' This imposed duties on the companies and it also secured to them rights. The grants of the constituent companies expired at different times, respectively 1904 and 1908, and it is contended that by the mere union of the lines, the duties and rights of the companies continued for the longer term. This, however, we are not required to determine."

The learned Justice then reviewed the other grants made, as here, in connection with the subject-matter then under consideration and in elucidation thereof; and then, on page 540, he continues:

"Why break up or risk the breaking up of a union of lines and the interchange of their traffic in a continuous carriage of passengers at one rate of fare? The extension was not for an unreasonable length of time. One of the grants did not expire until 1908, and it was reasonable to continue the other until

> that time. What policy or purpose could be urged against it?"

So we say, why break up the system of continuous carriage for one fare to and across Willson Avenue and to and from all parts of the city to Willson Avenue for one fare, as provided for in the ordinance of 1894? The grants under which this extension was to be operated expired at different times, one running to July 1st, 1914. To extend all to 1914 was not unreasonable involving as it did an extension of but a few years. What policy or purpose can be urged against it?

The application of the reasoning of the learned Justice just quoted to the local legislation adduced here is manifest. That reasoning as completely overthrows that of the court below as if it had been expressly directed against it. It can no longer be rationally urged that the intention of council to exercise the renewal power is not to be gathered from legislation like that now under consideration. Nor can the theory of the court below, touching the nature of the extension power and the inability of council to exercise it in connection with its renewal power, be urged any longer. If we are at all right in this, what can be said in support of the expiration date fixed by the court below, to-wit: March 22nd, 1905? In order to sustain that date, one is compelled to read out of the records of the city council ordinance after ordinance, resolution after resolution, which were plainly adopted for the purpose of prolonging the period of time fixed by the extension and renewal ordinance of March 22nd, 1880. It is not difficult, therefore, in our view, to rightfully eliminate that date. The only difficulty, if any there be, is to determine as between the months of July, 1913 and 1914. We but repeat ourselves when we urge that it is more consistent with the manifest object of the city council to procure a public service which should be both uniform and continuous with respect to the traveling public, rather than a service that would be diminishing and inadequate to meet the public demand, because of the expiration from time to time of grants differing in duration.

XI.

AS TO OTHER ASSIGNMENTS OF ERROR.

We do not consider it necessary to discuss any other assignments of error at least until we receive copies of the briefs of our adversaries upon the cross-appeal of appellees. We think the questions they may wish to present on their appeal will enable us, in shorter space, to state all we wish touching our assignments of error on those subjects.

In summing up our contention, we submit:

(a) The Garden Street tracks involved were, and are, extensions of the "main line" of the East Cleveland Railroad Company.

(b) The grant for the "main line" does not expire before July 13, 1913, and, as we insist, not until July, 1914.

(c) By consistent and uniform legislation, council has provided that the Garden Street extension should be operated in connection with the "main line" and the right to operate expire with the grants for the "main line." This is expressly so provided in the ordinance of 1885, and in two ordinances in 1891.

(d) In 1893 council fixed the terms and conditions of the consolidation forming the appellant. The grants of the constituent companies as then provided expired as follows:

The Broadway & Newburgh Street Railroad Company, July, 1914.

The East Cleveland Railroad Company, July, 1913.

The South Side Street Railroad Company, Oct., 1913.

The Brooklyn Street Railroad Company, January, 1910;

and, as a condition of such consolidation, council required thereafter the operation as an entire system of all the lines of the constituent companies, with through car service and general transfers. In order to comply with these conditions and exercise the right granted to the consolidated company, operation must be continued until the expiration of the longest grant, to-wit: July, 1914.

(e) In 1894, council provided for the construction by this Consolidated Company and The Cleveland City Railway Company of a cross-town line in Willson Avenue, and for the operation of such line in connection with all of the lines of the Consolidated Company, including the Garden Street extension. The operation so required of the Consolidated Company, the ordinance provided, should continue until July, 1914,—this being the date of expiration of the longest grant held by the Consolidated Company. The conditions of this cross-town ordinance cannot be complied with, nor can the Railway Company exercise the rights there granted in consideration of its expenditures in building the line, without the operation of the Garden Street extension to July, 1914.

(f) The City received full consideration for these grants, and the extensions were not for an unreasonable time: only for such time as made the right to operate an extension track expire at the same time as the "main line" of which it was an extension, and permitted operation in connection with

the cross-town line for such period as was necessary to fulfill the obligation and exercise the rights granted in the ordinance establishing such cross-town line.

(g) The right of the appellant to operate the Garden Street extension did not, as decreed below, expire in March, 1905; but by virtue of existing contracts, which cannot be impaired, appellant is entitled to operate the tracks in controversy until July, 1914.

Respectfully submitted,

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JOHN W. WARRINGTON,
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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 197.

THE CLEVELAND ELECTRIC RAILWAY COMPANY,
APPELLANT,

vs.

THE CITY OF CLEVELAND ET AL., APPELLEES.

BRIEF IN REPLY FOR APPELLANT.

WILLIAM B. SANDERS,
ANDREW SQUIRE,
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Counsel for Appellant.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 197.

THE CLEVELAND ELECTRIC RAILWAY COMPANY,
APPELLANT,

vs.

THE CITY OF CLEVELAND AND THE FOREST CITY RAILWAY COMPANY, APPELLEES.

REPLY BRIEF FOR APPELLANT.

The arguments of counsel for appellees, as well as the opinion of the court below, from which liberal quotation is made, by necessary implication, admit that if the Garden Street tracks in controversy are extensions of the main line of the East Cleveland Railroad Company, then the decree below was wrong. This being the admission of counsel, the burden of the argument is upon them to show that the Garden Street line was not an extension of the main line, but was an independent line of railroad, unconnected in any legal sense with the main line of the East Cleveland Railroad Company. Replying to this argument, we beg in the first place to add to that which we have already submitted in our original brief.

The Garden Street tracks in controversy are in substantially all ordinances referred to as a "branch." This lan-

guage ex vi termini imports that such tracks are an extension of a main line.

There is no such thing as a "branch" street railroad in terms known to the statutes of Ohio. When the council legislate as to a "branch," if branch means anything other than extension, such legislation is without statutory sanction.

Ordinances Referring to Garden Street Tracks as a Branch.

Among other ordinances and resolutions referring to the Garden Street tracks in controversy as a branch, we call attention to the following:

Resolution of 1873 (Record, 199), reciting:

"Whereas, The East Cleveland Railroad Company desires and proposes to connect their Garden Street branch with the main line * * *";

In 1876 (Record, 202):

"An ordinance to permit The East Cleveland Railroad Company to extend the Garden Street branch of its road."

In 1880 (Record, 208):

"An ordinance to permit The East Cleveland Railroad Company to extend the Garden Street branch of its railway."

1885 (Record, 211):

"An ordinance to permit The East Cleveland Railroad Company to extend the Garden Street branch of its railway."

1887 (Record, 217):

"An ordinance to permit The East Cleveland Railroad Company to extend the Garden Street branch of its railway."

1890 (Record, 225):

"An ordinance granting to The East Cleveland Railroad Company the right to substitute electric motive power for horse power upon its Garden Street branch."

It thus appears that the council in describing the Garden Street tracks in controversy have consistently referred to them as a branch of the railroad of The East Cleveland Company. This, we submit, is equivalent to describing the tracks according to their statutory status as extensions of the main line. As we have before suggested, there is no such thing known to the statutes of Ohio as a branch of a street railway. In its primary sense the word "branch" means: "A division or subdivision of the stem or arms of a tree or shrub." Hence the word is used as well to describe "something resembling a branch in its relation to the trunk, an offshoot or part extending from the main body of the thing; a ramification, a subdivision, an outgrowth."

To describe the Garden Street tracks as a branch, therefore, necessarily implies a trunk or a main thing of which such branch is an outgrowth—that is, an extension. If council had been searching for an accurate description of an extension track to be expressed in a word synonymous in meaning with "extension," no language could have been found which more precisely describes the thing than is found in the word "branch." If council should authorize a railroad company to build a branch from its main line, clearly such action would be authorized by section 2505 of the statutes, and such branch would necessarily be an extension within the authority of that section.

The City of Cleveland claims the right to disrupt this system of railroads because of some fanciful distinction between a branch of a main line and an extension of a main line. It cannot be that the contract and property rights of the appellant are to be impaired on so flimsy a contention.

No Power in East Cleveland Company to Build Independent Line.

Furthermore, in support of our contention as made in our original brief that the city council and the East Cleveland Railroad Company had no power in 1868 to grant or receive a

grant for or to construct and operate the Garden Street tracks as an independent line, because the company had theretofore adopted and constructed a line between the termini named in its articles of incorporation of 1859, and so had exhausted its power to construct any more tracks under those articles, we call attention to the settled law of Ohio that when a railroad company establishes and constructs a line it thereby exhausts its power in that behalf and cannot even change the location of the line, without special legislative authority to do so.

Little Miami R. R. Co. *vs.* Naylor, 2 Ohio St., 235; Moorehead *vs.* Little Miami R. R. Co., 17 Ohio Rep., 340; Atkinson *vs.* M. & C. R. R. Co., 15 Ohio St., 21.

See also

Toledo & Wabash R. R. Co. *vs.* Daniels, 16 Ohio St., 390, at pp. 395, 396.

There is no difference in principle between changing a line of railway once established between the termini specified in a charter, and accepting a grant for and constructing a line of railway additional to and different from the line so first established. It is to be observed, also, that the Supreme Court of Ohio did not sanction the right of a city to grant or of a company to accept a right to extend the tracks of a street railroad beyond the termini specified in its articles of incorporation, until express power was vested in municipalities to authorize such extensions to be made.

Simms *vs.* Brooklyn Street Railroad Company, 37th Ohio State, cited in our original brief.

This we maintain is in accord with the principles laid down in the other decisions just cited.

Even Treating This So-called Branch as an Independent Line Does Not Aid Appellees.

While we think the considerations already urged demonstrate the Garden Street tracks in controversy to be an extension of the main line of The East Cleveland Company, still we maintain that the evidence adduced here operates to extend the grants covering the Garden Street tracks and connected with them to July 1, 1914, no matter whether those tracks be regarded in law as extensions of the company's main line or as a distinct and independent line of the company.

The contention of counsel for appellee in this behalf amounts to a denial of the *power of the city council* to extend the term of operation of these Garden Street tracks, as confessedly council attempted to do in the ordinances of February, 1885, and of March and April, 1891. It thus becomes necessary to recall what the power of council is as to dealing with the subject-matter of the construction and extension of street railroads and renewals of grants for operation. These powers we have already fully pointed out in the original brief by citing and quoting the statutes of Ohio conferring the power, and as well have called attention to the language of this court construing these statutes (B., 23-26).

We beg to in substance quote from our original brief: The power of the council is comprehensive and continuing to at all times deal with and legislate as to the construction, operation, and extension of railroads and renewal of grants. These powers are just as effective in respect to independent lines as to extensions of lines.

With respect to extensions, special provision is made in the statute. Section 2505 in substance provides:

"The council of any city or village may grant permission by ordinance to any corporation, individual or company owning or having the right to construct any street railroad to extend their tracks * * * in any street or streets where council may deem such extension beneficial to the public,

and when such extension is made the charge for carrying passengers on any street railroad so extended * * * shall not be increased by reason of such extension * * *."

By force of this statute and the general delegation of power made by sections 3443, 2501, and 2502, the whole subject-matter of the terms and conditions upon which street railroads may be constructed, operated, and extended and their franchises renewed is committed by general legislation to the city council.

The various grants under discussion must be construed with reference to the fact that the whole subject-matter is within the discretion of the council.

The issue between counsel is whether the ordinance of March 22, 1880, under which the Garden Street branch was renewed for a period of twenty-five years, irrevocably committed council and the company to the date of expiration so fixed, to wit, March 22, 1905. Counsel for appellees, following the argument of the court below, practically contend that the date could not be changed, because the council, in providing for subsequent extensions of the line, was without power to make a change in expiration of grant. We insist that such an argument is only a partial consideration of the evidence contained in this record and places an entirely unauthorized limitation on the power of council.

The court below persisted, as counsel for appellees still persist, in denying to the city council the power to provide for the extension of existing street railroad tracks and at the same time to provide for the continued operation of the tracks as extended beyond the period originally fixed for the grant of the line extended. If this persistence is unsound, the whole claim, both of court and counsel, must fall to the ground. At the risk of in substance repeating what we have urged in our original brief, we beg again to call the court's attention to the fact that this argument of the District Judge and of opposing counsel totally ignores the existence of any power in city councils, except

only the mere power to permit tracks to be physically extended. They would not below and counsel will not here consider the other powers above pointed out. We allude to the renewal power and also to the power to fix the terms and conditions upon which street railways may be constructed, operated, extended, and consolidated.

It cannot be that council, in providing for a physical extension of tracks, thereby precludes itself from providing at the same time for the future operation of the tracks so to be extended; nor can it be that in providing the terms and conditions upon which the railway so extended shall be operated, it is precluded from ordaining the duration of time for such operation; and yet this is precisely what was held in the court below and is insisted upon by counsel here. It is said that because in 1880 it was provided that the Garden Street branch might be operated until 1905, it was not thereafter competent, in 1885 and in 1891, for the council to provide another date for the expiration of such right of operation. This is to deny to the council the power which is expressly conferred upon it by statute and a power which is continuing and, in the language of the statute, to be exercised by council whenever found by it to be conducive to the public interests.

In 1885 (Rec., 211) the council provided for an extension of the Garden Street line and in express terms provided that it should be operated in connection with the main line, and that the grants should "terminate with the grant of the main line." On March 20, 1891, the council provided for a further extension of the Garden Street line, and in terms provided that the line as so extended might be operated "until the expiration of the grants for said company's main line" (Rec., 227).

On April 20, 1891 (Rec., 228), the council provided for additional tracks upon this line of railway, and in terms provided that "the right herein granted shall be valid until the expiration of the grants for said company's tracks on

said Quincy Street east of Lincoln avenue, to wit, July 13, 1913."

Council in these ordinances did in fact provide for the operation of this line as extended until the dates fixed in the ordinances to which we have just referred. Where, we ask, is found any want of power in the council to do that which was here in fact attempted to be done? As we have pointed out in the original brief, to deny the operative force of these ordinances to accomplish that which the council ordained, upon the theory expressed by the court below, is to declare invalid a legislative act for want of power when in fact the act is authorized by the express provisions of the statutes.

Indeed, the holding of the court below and the contention of our adversaries are directly opposed to the holding of this court in the case of Cleveland *vs.* The Cleveland Electric Ry. Co. (201 U. S., 529). As pointed out in our original brief, this court there in substance and effect held that the exercise of the power in the city council to authorize the physical extension of tracks could be accompanied by the exercise also of the power to prolong the term of grant and operation of the line so to be extended. Moreover, the holding of the court below and the contention of counsel are in the teeth of the decision of the Supreme Court of Ohio in Hadden *ex rel. vs.* East Cleveland Railroad Company, where that court affirmed the circuit court sitting at Cleveland (6th Ohio Circuit Court, 318). This is the more remarkable because the ordinance there involved was the ordinance aforesaid of March 22, 1880; for it will be remembered that that ordinance was entitled an ordinance to extend tracks, and yet in its body it not only provided for such extension, but it also prolonged the duration of the grant of the line extended for a period of twenty-five years. This court approved the holding of the Supreme Court of Ohio, in the case last mentioned, in both of the Cleveland Street Railway cases which have been recently determined here. Besides, this court held

in the last one of those cases that it was competent for the city council to exercise in one and the same ordinance (1) the power to change the motive power from animal to electric, and (2) the power of renewal, so as to make a shorter grant coincident with the expiration of a longer grant.

It is worthy of mention that the Supreme Court of Ohio has recently again affirmed the doctrine announced in Hayden *ex rel. vs.* The Cleveland City Railway, *supra,* and so has again affirmed the right of city councils to exercise two or more of its powers, including the powers in question, when legislating on the subject of street railway track extension. We refer to the case of *Belle vs. Glenville* (17 Circuit Court Decisions; S. C., 27 Circuit Court Reports, 181), affirmed by the Supreme Court (73d Ohio State, 392, 397).

Further illustrating the errors of the court below, we find in the opinion (Record, 83 and 84) this statement:

"If an extension may have any other life than the life of the thing to which it forms an extension, it may be given an unlimited term of life by the council."

And much of the opinion is devoted to supporting this proposition.

When it is remembered that the power delegated to council to fix the terms and conditions upon which railroads may be constructed, extended, operated, and consolidated, and to "renew grants at expiration," is subject to the express limitation made upon this power in the provision that no grant or renewal of any grant "shall be valid for a greater period than twenty-five years from the date of such grant or renewal," we must conclude that the learned court below overlooked these statutory limitations. The limitation with respect to twenty-five years in terms as well applies to a grant relating to an extension of existing tracks as to a grant pertaining to the construction of an original line.

Errors of Fact.

Besides the errors of law into which the court below fell, as just pointed out, it also committed an error of fact of controlling importance in its opinion. We had offered the ordinance of April 20, 1891, in evidence (Record, p. 228) in support of our contention that the council had prolonged and extended the grant of the Garden Street branch to July 13, 1913. It was not disputed then, nor is it disputed now, that the council did so in express language; but the court below fell into an error in supposing that the council was mistaken respecting the passage of another ordinance and so held that the ordinance of 1891 aforesaid was inoperative. At page 81 of the record the court said on this subject:

"Respecting the ordinance of April 20th, 1891, granting to the East Cleveland Railway Company permission to lay an additional or second track in Quincy street and from New street to Woodland Hills avenue, and wherein it is provided that the right therein granted shall be 'valid until the expiration of the grant for said company's tracks in Quincy street east of Lincoln avenue, to wit, July 13th, 1913,' the conclusive answer is that the grant for the company's tracks in Quincy street east of Lincoln avenue did not and would not expire July 13th, 1913. The ordinance did not state the fact. It is true that the original right in Quincy street east of Lincoln avenue was, by the terms of the ordinance, granted to expire with the main line franchise. If by 'main line' was meant the Euclid avenue line, then it would expire in 1904. Subsequently that main line franchise was extended to July 13th, 1913, and doubtless the person who drafted this ordinance assumed that, as the main line franchise had been extended to July, 1913, the effect of that extension was to extend the time of the rights in Quincy street east of Lincoln avenue to that date. But the fatal defect in that process of reasoning, and the fatal objection to the date inserted in the ordinance of April 20, 1891, is that after the passage of the ordinance for the Quincy street extension east of Lincoln avenue, and before the passage of the ordinance extending the main line to 1913, to wit, on March

10, 1890, the council passed an ordinance authorizing the East Cleveland Railroad Company to substitute electrical motive power for horse power over its Garden street line to Woodland Hills avenue, and provided that the right to operate the Garden street branch should continue during the term of the company's then present grant for the operation of the tracks upon the Garden street branch."

The mistake of the court here was in its assumption that after the passage of the ordinance for the Quincy Street extension east of Lincoln avenue and before the passage of the ordinance extending the grant of the *main line to 1913,* the council had passed an ordinance authorizing "the change of motive power on the Garden Street branch." The truth was that the council had *before,* to wit, July 13, 1888, authorized the change of motive power to be made and had extended the term of the grant on the main line *to July 13, 1913 (Record, 219).* The council did not authorize such change in motive power to be made on the *Garden Street branch until March 10, 1890* (Record, 225). This error alone is plainly sufficient to destroy the force of the argument stated in the above quotation from the opinion of the court below.

But there is even more convincing evidence of its error. In 1885 the council had authorized the extension to be made east of Lincoln avenue, and had provided that such extension should be operated *"in connection with said branch and its main line and terminating with the grant for the main line, and with the express condition that no increase of fare shall be charged by said company on any part of its main line or on said extension, by reason of such extension"* (Record, 211). Nothing more certainly than this could show an intent on the part of the council to make the expiration of grant on the Garden Street branch coincident with that of the main line. When, therefore, the council, on July 13, 1888, extended the grant for the main line for a period of twenty-five years, to wit, until July 13, 1913, it

intended that this branch of the main line should be operated for this extended period of time. The relevance and weight, then, of the ordinance of April 20, 1891, before alluded to, become apparent and controlling; for, as seen, that ordinance provided that the grant should be "valid until the expiration of the grant for said company's tracks in Quincy street east of Lincoln avenue, *to wit, July 13th, 1913.*" If the court below had observed that the extension in time of the main line had so been made prior to the change allowed of motive power on the Garden Street branch, it is clear that it could not have employed the argument or reached the conclusion it did respecting the intention of council when it adopted the ordinance of *April 20, 1891.* If anything additional to this could be needed to portray and confirm the intention of the city council, it could be found in the ordinance which it adopted just a few weeks before, *to wit, on March 30, 1891* (*Record, 227*). It was there ordained that the grant there made as to the operation of the Garden Street branch should continue *"until the expiration of the grants for the said company's main line."*

It is said by the city solicitor (B., 59) that the reference to "main line" made in this last ordinance meant the Garden Street main line. This is as clearly a mistake on his part as the one was that we have just pointed out in the opinion of the court below concerning the ordinance of April 20, 1891. The city solicitor calls attention to the fact that in an ordinance passed June 18, 1887 (Record, 217), reference is made to a "Garden Street main line." The language there used was in reference to operating an extension of the Garden Street branch then authorized "in connection with said branch and its main line, and terminating with the grant for the Garden Street main line."

This is the only ordinance in which the phrase "Garden Street main line" can be found. It is to be observed that it is used in contradistinction to the company's "main line," as those words in all other instances as well as here have been

employed. It is to be remembered, also, that about two years previously, to wit, by the ordinance of February 9, 1885, the council had provided that the grants for the main line and the Garden Street branch should expire at the same time. It was a matter of indifference, therefore, as to which grant reference was made, whether the grant of the main line or of the Garden Street branch, when fixing duration. Indeed, the phrases "main line" and "Garden Street main line," having both been used in the ordinance of 1887, it is not open to either inference or argument that the reference to "main line" as used in the ordinance of March 30, 1891, could have meant anything else than the company's *"main line."* The council must be construed to have meant what it said—"main line." Counsel for the appellee railway company has made the same claim and error (B., 82, 83).

We submit that the evidential force of these ordinances cannot be avoided by any such errors as the court and counsel have made in respect to them.

Strict Construction of Public Grants.

Both the city solicitor and counsel for the appellee railway company devote pages in their respective briefs to a discussion of the rules of interpretation which should be followed in construing statutes or ordinances relating to grants in derogation of public rights or conferring special privileges. We entirely fail to see the pertinency of such discussion in the case at bar. Appellant has no reason to challenge the principle of construction contended for by counsel, as the claims which we are making in no way involve an application of the rules they invoke. Our contention is that by the plain language of the ordinances, taken as a whole, it appears that the council, having full power so to do, granted by contract the right to continue the operation of the tracks involved until July 1, 1914.

In principle the case at bar, as we have before suggested, is ruled by the two prior decisions of this court (Cleveland

City Ry. Co. *vs.* Cleveland, 194 U. S., and Cleveland *vs.* Cleveland Electric Ry. Co., 201 U. S.). We have followed in our discussion no rule of interpretation which is not fully authorized by this court in the cases just cited.

Ordinances Stipulated into the Record.

Since the printing of our original brief, by stipulation various ordinances have become part of the record, and we find in the brief filed by counsel for appellees references to some of such ordinances. It is said that these ordinances, for the most part, having been passed subsequent to 1894, are "illustrative" of the contention of appellees that the council did not intend, in the Wilson Avenue cross-town ordinance of 1894, to extend the franchises of the two companies whose lines cross or come to Wilson avenue. We think it sufficient to say in reply to this suggestion, that if the legal effect of the contract evidenced in the cross-town ordinance of 1894 is as we contend, it will not be pretended that by the acceptance of the subsequent ordinances to which counsel refers any of the rights granted to the company in 1894 have been modified or impaired. In so far as these subsequent ordinances referred to by appellees may be said to throw any light upon matters here in controversy, it must be with reference to the policy of council to make extension expire with the grants for the main line, and it will be found upon an examination of these subsequent ordinances that in each of them the expiration of the extension is made coincident with the main line. In this respect these ordinances but tend to corroborate the contention which we have been making, that it was the intention of the council, with respect to grants for the Garden Street tracks as well as to all other extensions, to make their period of duration the same as that of the main line.

Short-time Grant Since 1901.

The appellees have introduced among other ordinances a number of grants largely referring to tracks covering short distances in the business part of the city which have in terms been made to expire March 22, 1905. We do not know just what is claimed by counsel for these grants and the company's acceptance of the same, but think it appropriate to refer to the fact that each of them was made pending the existing controversy between the City of Cleveland and the railroad company as to the duration of its rights in the streets. That this controversy has been pending at least since 1900 appears from the records of this court in the cases to which we have so often referred. Pending such controversy, the company could not do anything else than to accept the grants and furnish the accommodations which those short extensions would supply. Surely such conduct is not important in the solution of the main question presented in this record. No one of these short-term grants authorizes the construction of tracks exceeding a distance of 600 feet.

Resolution of 1893 Declaring Policy of Council to Have All Franchises Expire July 1, 1914.

Among the new matter introduced by appellees, we find (page 13) a resolution adopted by the city council March 27, 1893, in the following language:

"That in the opinion of this council all franchises granted by this council for the use of streets for street-car lines should terminate July 1, 1914, instead of twenty-five years hence;"

and following this resolution, upon the same page, is a certificate from the city clerk of Cleveland that at the time of the passage of this resolution there was pending *"the appli-*

cation of the Cleveland Electric Railway Company for a grant for twenty-five years for a cross-town line in Wilson avenue."

It here appears that the council had before it the question as to what its policy ought to be with reference to the termination of street railroad grants thereafter made, and by the terms of its resolution it fixed such date for a common termination to be July 1, 1914. There was pending at the time an application of the Cleveland Electric Railway Company with reference to the Wilson Avenue cross-town line, and we find that the termination of the grant upon Wilson avenue was, together with the new obligations which that ordinance imposed upon the company, made to expire in accordance with the policy of the council declared in this resolution of July 1, 1914, and, as we shall show from other ordinances passed subsequent to the adoption of this resolution, the policy of the council in this respect was followed. Before doing so, however we wish to say that the other ordinances offered by the appellees under this stipulation, showing grants to have been made with expiration periods differing from the one just stated, do not militate against this declared policy, because they but represent individual instances of the exercise of the power to extend the tracks made under grants expiring at different dates, and they can all be harmonized with our contention that all of those grants were extended by the force and operation of the cross-town grant, as claimed in our original brief.

Additional Ordinances Which Sustain the Contention of Appellant that the Grant for the Main Line and the Garden Street Extension Does Not Expire Prior to July 1, 1914.

We have, under the stipulation referred to, introduced into the record four additional ordinances to which we wish to call special attention.

(*a*) October 21, 1889, an ordinance was passed and accepted entitled *"An ordinance granting permission to the Broadway & Newburgh Street Railway Company to extend its line of double track street railroad on and along Miles avenue from Broadway to the easterly limits of the city."* This is an extension of the main line of the Broadway and Newburgh street railroad; and by section 5 of the ordinance it is provided:

"This grant shall expire with the grant to said company for its main line and extensions as made July 1, 1889, to wit, July 1, 1914." * * *

(*b*) July 21, 1890, an ordinance was passed and accepted entitled *"An ordinance to grant to the Broadway & Newburgh Street Railroad Company the right to extend and operate its line of double track street railroad in Broadway at Liberal street; thence in and along Pittsburg street and Kingsbury Run Viaduct extension so called, to a connection with said company's tracks now in Humboldt street."* The line here provided for is an extension of the main line of the Broadway and Newburgh Street Railroad Company, and, as to its expiration, it is provided:

"SEC. 6. *This grant shall expire with the grant of said company for its main line and extensions as made July 1, 1889, to wit, July 1, 1914."* * * *

Here it is to be observed that the council pursue what we claim to have been a uniform policy, to make extension grants expire with the grant of the main line.

Extension of Main Line of East Cleveland Railroad Company Subsequent to July, 1894, Recognizing That Grant for Main Line, Does Not Expire Prior to July 1, 1914.

We now call attention to two ordinances which, we submit, clearly sustain our contention not only as to the uniform policy of council to make the grants for all extensions of the East Cleveland Company's main line expire with the grant for such main line, but as well our contention that the legal effect of the cross-town ordinance of 1894 was to extend the life of the main line grant of the East Cleveland Company and its extensions to July 1, 1914.

1. October 21, 1895, an ordinance was passed and accepted entitled "*An ordinance granting permission to the Cleveland Electric Railway Company, its successors and assigns, to extend its double-track street railroad from the junction of Carabelli street and Euclid avenue easterly to the easterly limits of the city of Cleveland.*" The extension here authorized is an extension of the "main line" of the East Cleveland Railroad Company, and in section 3 it is provided:

"This grant shall expire July 1, 1914."

Here it will be observed that the year next following the establishment of the cross-town line upon Wilson avenue, and in harmony with the declared policy of the city in the resolution of 1893, an extension of the main line upon Euclid avenue is authorized, and it is expressly provided that the grant shall expire July 1, 1914—that is, at the same time with the Wilson Avenue cross-town ordinance passed the year

previous. This is the first extension of the main line subsequent to the establishment of the cross-town line upon Wilson avenue, and by its terms the council recognize that by virtue of the cross-town ordinance the grant of the *"main line"* has been renewed to July 1, 1914, and therefore provides in this extension ordinance that the main line may be extended and the grant expire July 1, 1914.

2. September 28, 1896, council passed an ordinance entitled *"An ordinance granting permission to the Cleveland Electric Railway Company, its successors or assigns, to extend its street railroad across Deering, Stearns and Fairfield streets, with suitable curves or connecting tracks in Euclid avenue and Cedar avenue."* This ordinance was duly accepted and the line constructed, and it is an extension of the main line upon Euclid avenue. By section 4 of the ordinance it is provided:

"Said extension shall be operated as a part of the Euclid Avenue main line of said company; and said company shall operate on said extension through cars to and from the Public square under a ten-minute schedule or headway between the hours of six a. m. and eight p. m., and under a fifteen-minute schedule or headway between the hours of eight p. m. and eleven p. m."

The extension here provided for is an extension of the *"main line"* of the company. It is to be operated as part of such main line under a schedule fixed by council. By section 13 it is provided:

"This grant shall expire July 1, 1914."

This, then, is an ordinance relating to an extension of the *"main line"* of the East Cleveland Company, providing that such extension shall be operated as part of the main line and providing that the grant shall expire July 1, 1914. Is it not manifest that council here recognizes the legal effect of the Wilson Avenue cross-town ordinance? As we have

before shown, such legal effect was to extend the main line up Euclid avenue to July 1, 1914. In this ordinance this fact is recognized.

The Garden Street tracks in controversy are operated under grants made to expire with the *"main line."* The "main line" here referred to is the same which we have just shown has been renewed until July 1, 1914. Hence we submit that the grant upon Garden street can not be held to expire prior to July 1, 1914, and that in the ordinance to which we have just called attention is found conclusive evidence of intent on the part of the City of Cleveland and the railroad company to make all grants of the Cleveland Electric Railway Company in existence in 1894 expire with the grant of the cross-town line upon Wilson avenue, to-wit, July 1, 1914.

Appellees' Contention as to Wilson Avenue Cross-town Ordinance.

The contention we make as to the legal effect of the contract of 1894, made between the city and the two railway companies then operating, is by the city solicitor met by two suggestions:

First, attention is called to section 12 of this ordinance, which provides in substance that in case of the failure or refusal of either of the companies to perform the terms and conditions of the ordinance, such failure shall work a forfeiture of the grant;

And, second, that the obligation to transfer to and from Wilson avenue did not add to the then existing obligations of the company.

As to the first of these criticisms, it is sufficient to say that the obligation of the company to comply with the terms of the ordinance is a contract obligation which may be specifically enforced by mandatory injunction, and not only is this true in Ohio, but it is as well true that the statutes make it the duty of the city solicitor to enforce such contracts.

It is surprising, then, to find a suggestion from the city solicitor inviting a street railroad company to violate its contract, when by statutory provisions it is made his official duty to compel the performance of such contract. Moreover, it comes with ill grace from the officials of Cleveland to suggest, as a defense to its grantees' contractual right and obligation, that it may surrender its right by repudiation of its obligation.

As to the *second* criticism by the city solicitor, that the obligations assumed did not increase existing obligations as to transfer, it is sufficient to point out that the learned solicitor overlooks the fact that this was a contract made between the city and two independent railway companies, providing for a general system of transfer, making, as respects the Wilson Avenue Cross-town line, one system, with general transfers to and from the lines of independent companies. Before the passage of this ordinance there was no such obligation of transfers. By the terms of the ordinance such mutual and general transfer is required until the expiration of the grant, July 1, 1914.

Claim as to Indeterminate Grants.

Counsel for appellees discuss and combat a claim referred to in the court below as to the legal effect of certain grants from the township of East Cleveland, containing no limit as to the term of grant and made at a time when municipalities had power to make grants without such limitation. We have refrained from discussion of this question for the reason that, having accepted a grant from the City of Cleveland as to the operation of these tracks, as we claim, until 1914, appellant's right to such date must be controlled by the contract with the city, and it would be premature at this time to discuss what the company's legal status as to these tracks will be at the expiration of its present contract with the city. The indeterminate grants referred to were made by the township of East Cleveland, and as to whether or not the city will be

bound to recognize the validity of such grants after the termination of its present operating contract with appellant is a question which we do not think arises upon this record. Cleveland *vs.* Cleveland Electric Ry. Co., *supra.*

Appellant's System of Railway.

Counsel for appellees indulge in much criticism as respects some of the allegations of the bill and claims made in our original brief that the appellant company is operating an entire system of 236 miles of railway, comprising many lines made interdependent through contractual obligations with the city to operate them as an entirety (see map, R., 258), of which these Garden Street tracks form a part, but have long since ceased to be in any sense independent lines. The criticism which is indulged seems rather more rhetorical than argumentative. It is not disputed that prior to the consolidation each constituent company was operated as an independent line; that there was little, if any, exchange of traffic between them by transfer, and that one of the terms and conditions fixed by the council in consenting to the consolidation was to require the operation of the system in such a manner as that upon the payment of one fare a passenger should be carried from any one of the constituent lines to and over any of the other lines. It is manifest that the practical effect of this consolidation of companies, with the conditions fixed by the council, did at once make of the constituent companies one system, as respects the traveling public. This interchange of traffic was required to be and was extended by the ordinance of July 17, 1893 (Rec., 232). It is not disputed but that in 1894, in the establishment of the cross-town line upon Wilson avenue, such provision was made as not only the appellant company, but also what was then an independent company, The Cleveland City Railway Company, were obligated to so operate all of their lines as to enable passengers upon any of the lines of either company to transfer to, from, and across Wilson avenue from any and all

lines coming to or crossing Wilson avenue. The practical effect of these provisions was to make a system united by the Wilson Avenue Cross-town line. The grant so made resulted in making of all the lines in Cleveland one entire system, and conferred upon the traveling public benefits and advantages by way of reduction of fare and convenience of service, and involved on the part of the company the expenditure necessary to build the cross-town line and to acquire the necessary equipment to accommodate the public in the operation of through cars over the entire system. Having received the benefit of these arrangements and expenditures, it ill becomes the City of Cleveland to now make any such question as is sought to be made by the city solicitor, to wit, that it was not the intention of council to bring about the practical situation which has resulted, as set forth in the bill. And, as we have before shown, the attempt here made is to disrupt this system so established under legislative grants, and to deprive the company of the right to continue the operation as respects the Garden Street line, and to deprive the public of the benefit which it has been and is now receiving by reason of the operation contemplated in these various ordinances.

It will not do to say that this sanctioned unification of lines, together with the sanctioned dates of expiration of grants, does not tend to show an intention of the city council and also of the companies to continue and prolong the operation of each of the constituent lines up to a common period of expiration of grants. We say "sanctioned unification." This is criticised. It was sanctioned by approval of the consolidation in 1893. It was sanctioned by the adoption and acceptance of the ordinance of July 17, 1893, whereby all of the conditions of consent to consolidation were reimposed and also new and important obligations were imposed upon each of the constituent companies (Rec., 232, 234). It was sanctioned by the statute authorizing one company to purchase the lines of another, as was done by the appellant later.

It was sanctioned by the recognition of the city council from time to time in legislating in favor of the appellant, not only upon its lines acquired through consolidation, but also its lines obtained through purchase. It has been sanctioned also by years of acquiescence, both of the officials of the city of Cleveland and the traveling public. Above all, this unification was contemplated and sanctioned by the cross-town ordinance, which, as we have so often pointed out, imposed new and additional obligations under sanction and consent of the two independent companies, and the contract involved in the terms of the ordinance.

Inference Deducible Alone from Dates of Expiration, When Considered Together.

More than this. No one can reflect upon the subject alone of *dates of expiration*, as fixed and sanctioned from time to time by the city council, without becoming persuaded of a clear and indisputable intent of the City of Cleveland to change the dates fixed in the late seventies and the early eighties for the expiration of street-railway grants.

We cannot recall a single grant, certainly no grant has been suggested, as to which the council has not since those dates authorized extensions of the tracks embraced within those grants, and at the same time provided for the operation of the new tracks in connection with old ones up to a period later than the dates mentioned in the renewals made in the late seventies and the early eighties. What could have been the purpose of using these later dates? What was the purpose of the council in using the later of two expiring dates in the Woodland Avenue case? This court has answered the question by holding that it meant to provide that the shorter grant should be changed and brought up to a point coincident with the longer one. What could the council have meant when it was using later dates with respect to the expiration of the main line of the East Cleveland Railroad Company? Our learned adversaries make and repeat admissions

that the council intended to extend the grants covering the main line up to July 13, 1913. By the same tokens, we maintain that they are bound logically to concede that when the council fixed the dates employed in its legislation of 1891 respecting the Garden Street extension it intended those grants to continue in point of time until July 13, 1913. The council in express terms so said.

It follows, also, that we must ascribe to the council a like purpose to continue the operation of the Garden Street extension, as well as all the other lines leading to or crossing Wilson avenue, throughout the life of the covenants of the cross-town-ordinance contract. This derives striking support of an evidential character through the legislation of 1895 and 1896, extending the main line of the appellant's predecessor, the East Cleveland Railroad Company, where the council expressly ordained that the grant of the main line should continue until the date fixed for the expiration of the cross-town grant, July 1, 1914.

What possible reason can be suggested for supposing that the council would so provide as to the main line and yet intend that this Garden Street extension of the main line should expire nine years in advance of that date? The only answer vouchsafed to this by either the court below or our adversaries has been that the city council made mistakes and exceeded its powers when it twice said in express terms in 1891 that the grants for the Garden Street branch should be prolonged and continued throughout the life of the grant for the main line. This concedes that the city council *attempted* to avoid a difference in expiration of dates as between the grants for this extension and the main line. This concedes that it *intended* to prolong the extension grant to the date of the main-line grant. Can this court, in view of its former decisions on this subject, be satisfied with this sort of contention of our adversaries?

II.

Questions on the Cross-Appeal.

But two questions are urged by counsel in support of the cross-appeal. Briefly stated, it is in substance contended (1) that the ordinance of January 4, 1904, granting rights to the Forest City Company upon Garden street, was a valid ordinance as a renewal of the prior grant to the East Cleveland Railroad Company and in so far as it provided for the taking over by the Forest City Company of the tracks, poles, wires, etc., of the appellant; (2) that since it was determined by the circuit court that the term for which such tracks were permitted to be used upon Garden street expired March 22, 1905, this property of the company passed to the city as part of the real estate embraced in the street of which it is said the city owns the fee. Of these contentions in their order:

1. THE ORDINANCE OF JULY, 1904, GRANTING A RENEWAL TO THE FOREST CITY RAILWAY COMPANY OF AN EXISTING GRANT TO THE EAST CLEVELAND COMPANY, WAS INVALID, BECAUSE (1) IT UNDERTAKES TO RENEW AN EXISTING GRANT TO A STRANGER TO SUCH GRANT, and (2) IT AUTHORIZES THE TAKING OF PROPERTY WITHOUT DUE PROCESS OF LAW.

The contention of our adversaries was well disposed of by Judge Lawrence in the court of common pleas of Cuyahoga county in Reynolds, as tax-payer, etc., *vs.* The City of Cleveland and others, the Judge summing up his discussion by saying:

"This being the view of the Supreme Court concerning the nature of the grant made by municipal corporations, we are bound to hold that a renewal of such grant, like the renewal of a note or of a lease, must be made to and with the opposite party to the contract and not to or with a stranger,

and that the renewal in this case being an attempt to deal with a stranger to the original grant is therefore void."

The opinion from which we have just quoted is found in the Record in this case (Rec., p. 98); and the decree entered in accordance therewith was thereafter affirmed upon appeal to the circuit court, sitting in Cuyahoga county.

The court below in this cause reached the same conclusion, saying in the opinion:

"I am very well satisfied that the ordinance is invalid under which The Forest City Railway Company, defendant herein, undertakes to assert rights in the streets both because a renewal cannot be granted to other than the owner of the original grant, and also because this ordinance seeks to take property without due process of law." (See record in this cause, p. 273.)

In Carter *vs.* Brooklyn Life Insurance Co., 110 N. Y., 15, 22, the court say:

"To renew in its popular sense is to refresh, revive or rehabilitate an expiring or declining subject, but is not to describe the making of a new contract or the creation of a new existence."

See also—
Koday *vs.* Paty, 153 Ind., 179, 184.
White *vs.* Ludlow Mfg. Co., 128 Mass., 280.

It is, we submit, clear that a renewal of an unexpired grant owned by the East Cleveland Railroad Company could not be made to a stranger to the grant. Besides all other reasons, such action amounts to a new and independent grant and would have to be advertised and let to the lowest bidder (secs. 2501 to 2503, Ohio Rev. Stats.). This proposition is, we submit, too clear for argument.

Again, the ordinance of January 11, 1904, attempts to authorize the taking of appellant's property without due process of law. It is entitled:

"An ordinance granting to the Forest City Railway Company, its successors and assigns, the renewal right to maintain and operate certain existing double and single track street railroads in the following streets (Rec., p. 244).

. .

It will be observed that neither in the title nor in the body of the ordinance is there any provision for the construction of a railroad by the Forest City Railway Company, the whole object of the ordinance being to authorize the operation of "certain existing double and single track street railroads."

Section 14 of this ordinance makes it entirely clear that it is intended to confer the right to take over the property of appellant, as in this section is a provision that the grantee shall pay to the owner the value of the tracks, poles, etc., to be reached by agreement, or, upon a failure to agree, to be determined, in some court of competent jurisdiction. Clearly this is an attempt to authorize arbitrarily the taking of possession of the property of the appellant and remit it to an action for damages to recover its value.

We beg to submit as part of our argument an admirable summing up by Judge Lawrence of this feature of the case, in his decision to which we have already referred. The learned judge said:

"The unreasonableness of any other view is well illustrated by the course which the city council took in attempting to grant to a company the franchises for a street railroad under the form of renewing the previous grant to another company. Evidently it was feared that to grant the right to construct a railroad would make a new contract, and the only alternative was to undertake to transfer to a new company the tracks, poles, wires and appliances of the old company now in the street, upon condition of paying the value thereof to the owner, to be agreed upon between the parties, together with twenty per cent. added to such valuation; but if the parties did not agree on or before December 22, 1904, then to pay to the other such sum as should finally be adjudicated by a court of competent jurisdiction

to be the value thereof. * * * This is plainly an attempt to appropriate private property without authority of law and without making compensation in advance, and if carried out would deprive the owner of his property without due process of law. In my opinion the provision to that effect of itself makes the ordinance invalid, for without it the ordinance cannot be operative."

This was as well the opinion of the court below in the case at bar, and we think it unnecessary to add anything to what these judges have said upon that subject.

That the tracks, poles, wires, and appliances in use by the appellant upon Garden street constitute private property, protected by the same guaranty of the Constitution against being taken without due process of law as is the property of an individual, is settled. In Ohio the location as well as the tracks, etc., are held to be private property (H. C. & C. Trac. Co. *vs.* H. & L. Elec. Tran. Co., 69 Ohio St., 402 and 409-412).

See also—

C., B. & Q. R. R. Co. *vs.* Chicago, 166 U. S., 226.
Davidson *vs.* New Orleans, 96 U. S., 87.
Missouri Pacific Ry. Co. *vs.* Nebraska, 164 U. S., 403.
Turnpike Co. *vs.* Parks *et al.*, 50 Ohio St., 598.
Ricker *vs.* Hoyt, 53 Mich., 185.
Ry. Co. *vs.* R. R. Co., 36 Ohio St., 239, at 251, bot.
Street Ry. Co. *vs.* Street Ry. Co., 50 Ohio St., 603, at 615.

If we are right thus far, the ordinance of January 11, 1904, would not entitle the Forest City Company to take possession of appellant's property, even if it were held that the grant to the Garden Street extension expired March 22, 1905. The ordinance would still be open to the objections just mentioned, both as to the attempted renewal to a

stranger and the arbitrary seizure without due process of law.

It is true, as before stated, that counsel urge that the appellant's tracks, poles, wires, etc., are fixtures in the sense that they would become the property of the City of Cleveland upon the expiration of the term of the street-railway grant, and that the city could, as it has here attempted to, transfer its right and title in such property to the Forest City Company. Counsel, in making this claim, frankly admit that it finds no support in any adjudicated case. Plainly such property could not become a fixture, as claimed, in the absence of a showing of an express agreement and intent on the part of the city and the street railway company to treat it as a fixture to be permanently annexed to the realty, so as to transmit the title thereto from the company to the city at the expiration of the grant. It is not claimed that any such showing has been made. If the tracks, poles, wires, etc., could be regarded as at all analogous to a fixture, it would be in the nature of a trade fixture. It is settled that trade fixtures are, in the absence of express agreement to the contrary, to be treated as having been intended to be placed upon the realty only for the time and the object of the possession, and to be removable by the owner at the expiration of the term. The private ownership of tracks and appliances at all times recognized by the courts is inconsistent with the claim here made.

In making the citations and argument aforesaid against the contention of our adversaries, we wish it to be observed that we urge nothing inconsistent with our claim that the court below erred in holding that the grant in question expired March 22, 1905. That error was the foundation for the appeal of the Cleveland Electric Railway Company, and because of such error it asks a reversal of the judgment. Under this decree appellant's rights in the streets are adjudged terminated and the city entitled to remove its tracks.

If the appellant's rights have not expired, it is entitled to enjoin both the Forest City Railway Company and the city from interference.

Respectfully submitted.

WILLIAM B. SANDERS,
ANDREW SQUIRE,
JOHN W. WARRINGTON,
Counsel for Appellant.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 197.

THE CLEVELAND ELECTRIC RAILWAY COMPANY,
APPELLANT,

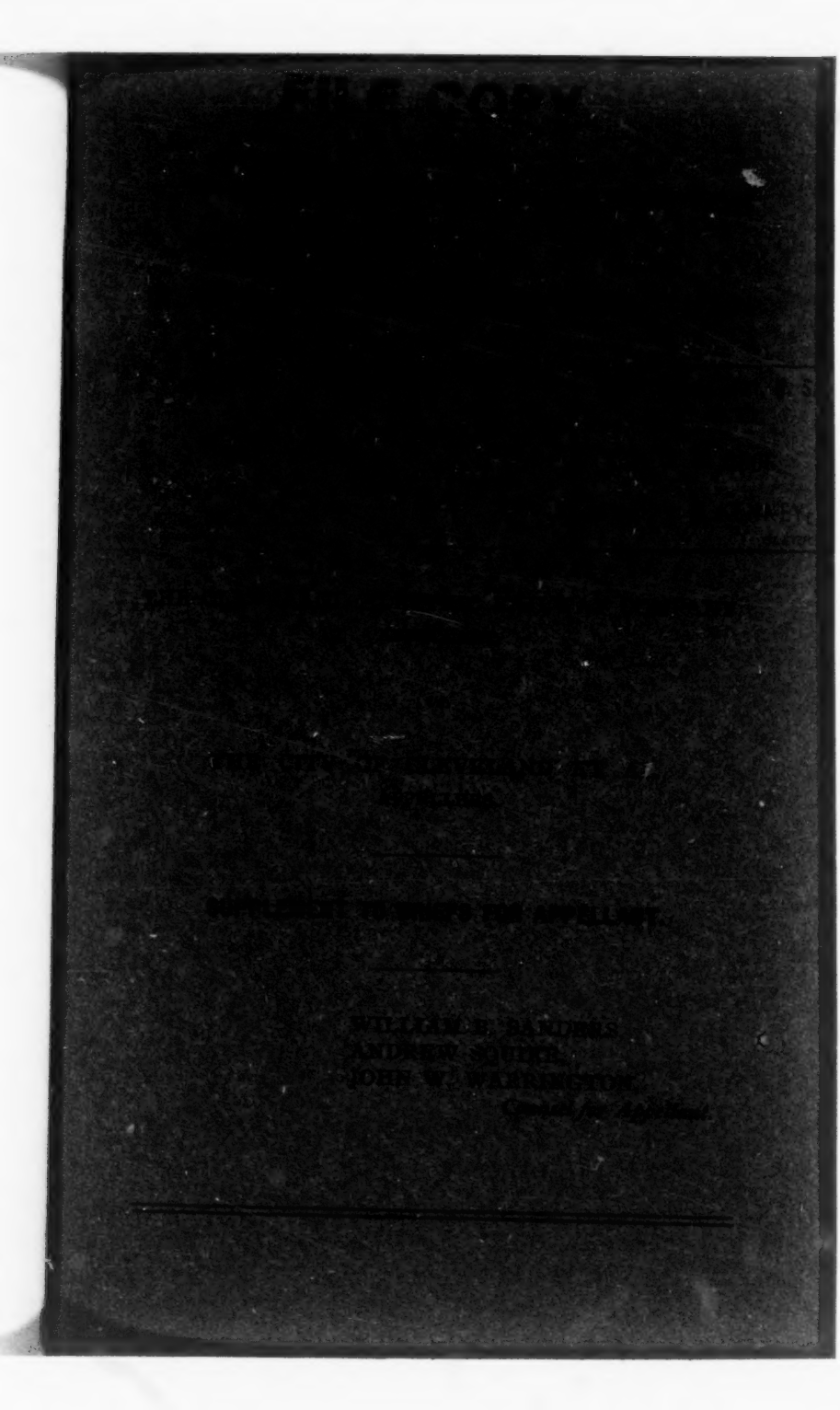
vs.

CITY OF CLEVELAND AND THE FOREST CITY RAILWAY COMPANY,
APPELLEES.

MOTION FOR LEAVE TO FILE SUPPLEMENT TO BRIEFS.

The Cleveland Electric Railway Company, appellant, respectfully moves the Court for leave to file a supplement to the briefs filed prior to the oral argument in this cause, and submits herewith the "Supplement to Briefs for Appellant" which it so asks leave to file.

WILLIAM B. SANDERS,
JOHN W. WARRINGTON,
Of Counsel for Appellant.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 197.

THE CLEVELAND ELECTRIC RAILWAY COMPANY,
APPELLANT,

vs.

THE CITY OF CLEVELAND ET AL.,
APPELLEES.

SUPPLEMENT TO BRIEFS FOR APPELLANT.

In view of the plenary powers residing in city councils to renew street railway grants for not more than twenty-five years and to fix the terms and conditions upon which such railways may be constructed, operated and extended, what difference in legal effect, as regards the exercise of these statutory powers, is there between—

(1) **A grant in form permissive to operate existing street railway tracks for a definite period of time, extending beyond the term of the old grant, and**

(2) **A grant to extend existing tracks subject to a covenant in form imperative to operate both the existing and extension**

tracks as an entirety, the extension grant being also for a longer period of time than the old grant had to run?

If we may be permitted to do so at the present stage of this cause, we should like to submit the following remarks upon the above question.

Our aim is respectfully to endeavor to meet some questions that were stated from the bench during the oral argument. As we understood those questions, while they assumed that there is no particular form of expression prescribed for exercising the powers of city councils to renew street railway grants or to fix the terms and conditions upon which such railways may be constructed, operated or extended, yet it is due to the members of council and the mayor that the ordinances adduced in evidence should by their language show that the members when adopting, and the mayor when approving the ordinance, consciously exercised those statutory powers. We may concede that this is in accord with familiar decisions of this court. The central idea of those decisions is, we think, that while it is true that public grants in order to be valid must be expressed in clear and unambiguous language, nevertheless, since different words are employed by different public bodies in making such grants, their true intent must be and in fact is ascertained by ordinary processes of reasoning and interpretation. This is apparent from the very processes of reasoning adopted in reaching the conclusions announced in those decisions; indeed, it is inevitable.

We take it that in view alone of the cases which have been recently decided by this court between the parties to this cause, it will not be disputed, certainly not successfully, that a municipal grant in form permissive, authorizing the use and operation of existing street railroad tracks for a definite period and extending beyond the term of the old grant, will upon acceptance be treated as a valid exercise of the statutory power to prolong the old existing grant in point of time. If we are right in this, we may turn without further delay to a consideration of

the second part of the question stated at the beginning of this brief.

This question, it will be recalled, grew out of a claim of counsel in oral argument respecting the meaning of an ordinance passed September 2, 1896. (*Sup't to Rec. p. 309*). That ordinance granted to appellant *"permission to extend its line of railway"* etc. subject to certain requirements, which may fairly be called conditions, imposed upon appellant. One of these provides (Sec. 4, p. 310 Ibid):

"Said extension shall be operated as a part of the Euclid avenue main line of said company; and said company shall operate on said extension through cars to and from the Public Square, under a ten-minute schedule or headway between the hours of 6 a. m. and 8 p. m. and under a fifteen-minute schedule or headway between the hours of 8 p. m. and 11 p. m."

Again, it is provided (Sec. 13, p. 312 Ibid):

"This grant shall expire July 1, 1914".

At the end of the ordinance, *on page 313* following, it appears that after this ordinance was finally passed by the council, it was *"approved by the Mayor"*.

It will be remembered that both defendants in error admit that the grant of the Euclid Avenue main line will not in any event expire prior to July 13, 1913. The problem then is whether the powers of the council referred to in the question under discussion, were fairly and reasonably so exercised by the passage of the extension ordinance just alluded to, as to extend the term of the grant of the main line from July 13, 1913 to July 1, 1914, and so make the old and new grants coincident in date of expiration. Are not the words of the extension ordinance open to interpretation on a question like this?

Plainly the granting clause is couched in the ordinary language employed for making extension grants. This is abundantly proved by a comparison merely of the extension ordinance with the other ordinances in the record, which are conceded to have operated to authorize extensions to be made

of the tracks involved. The concession made over and over again by our adversaries, that the grant for the main line extends to July 13, 1913, ought logically to compel the further admission that *the members of the city council* and *the mayor* of the city of Cleveland were, when they adopted and approved the extension ordinance, cognizant of this date of expiration. That date had been fixed in 1888. Not to charge those officials with such knowledge is to impute to them a state of ignorance totally inconsistent with any official intelligence at all.

The ultimate inquiry then is whether we may fairly ascribe to those officials, the members of council and the mayor, the further knowledge that the extension ordinance contained a requirement that both the extension and the main line should be operated in the way specified for the additional period of time to intervene between July 13, 1913 and July 1, 1914, and whether they should reasonably be presumed to have meant to exercise the powers confessedly within their control and discretion necessary to enable the company to fulfill that requirement. In order to meet this inquiry, as it seems to us, it is only necessary to read the language of the requirement or covenant above quoted, in connection with the rest of the ordinance. Manifestly, the granting clause and this covenant must be construed together; indeed, the ordinance must be construed as a whole.

The extension "shall be operated as a part of the Euclid Avenue main line" with "through cars to and from the Public Square", according to a fixed headway. Surely no doubt or ambiguity can be fairly suggested as to the true meaning of this language. The extension must be so operated *as a part* of the main line. The extension and the main line were thus made an entirety, and a specific mode was thus prescribed for operating both as an entirety. The duty so imposed is imperative, no matter whether we call the provision a requirement, condition or covenant. The duty so imposed and the obligation so undertaken, were and are in their nature and essence continuing. The grant was made to continue until July 1, 1914; and

the duty and obligation so imposed and undertaken were indissolubly joined to the grant. Such a grant cannot be measured either in substance or time, without including both the duty and obligation to operate the extension and main line as a unit. The evident purpose was to secure a continuous car-service from the west terminus of the main line to the east terminus of the extension; and to continue such service throughout the life of the extension grant.

This is the plain and ordinary import of the language of the ordinance. There is not an ambiguous word or sentence. It is a clear and simple permission to the company to construct an extension, on condition that it should operate it and the main line together in a particular way. There is no limitation imposed as to duration of enjoyment of the grant or performance of the condition, except only the life of the extension grant. What rule of interpretation then will avail for introducing a shorter limitation as to the condition, any more than as to the grant? The condition is part of the grant. Why should any date of expiration have been named in the extension ordinance at all, if it was not intended that this through car-service should continue to that date? Both the extension grant and the obligation respecting the through car-service would have ended with the expiration of the grant for the main line, if no date had been specified in the extension ordinance.

Can it be true, in view of all this, that the councilmen and the mayor did not at the time know that they were authorizing an extension of tracks to be made and were requiring the operation both of those tracks and the tracks of the main line until the date fixed by the extension ordinance? How could they expect this through car-service to be given and continued between the Public Square and the end of the extension on Euclid Heights, without consciously giving the opportunity so to do? The very words of their ordinance specified the extension and the main line, and required the through car-service to be given over both. They were residents of the city, which they were so representing. They were familiar with the local-

ity and with the car-service needed. The intelligence that is ordinarily presumed to reside in a local legislative body, was augmented by that of the mayor of the city. The mayor possessed the veto power, and it is certainly not a violent presumption to accord to him an intelligent understanding of his exercise of that power. Indeed, it is not conceivable that these officials did not understand a plain and simple subject of legislation like this.

It is to be observed that there is no allegation of fraud or bad faith in the answer of either of the defendants in error. No issue of this character is presented by the pleadings. Good faith then of these city officials respecting the consideration and adoption and approval of this ordinance, must by every presumption and rule of law be accorded to their action. The ordinance has been in existence for more than ten years. It would therefore be an unusual and strange result to deny to the ordinance the plain meaning of its words, upon any theory of lack of intelligence or understanding on the part of the city officials.

What we have said applies equally to the theory recently expressed in a decision of this court, that legislative grants "are usually prepared by those interested in them"; for we but repeat when we affirm, that no person, official or otherwise, could have failed to observe the condition requiring operation of the main line and extension as an entirety, with through cars, under the grant expressly made to continue until July 1, 1914, without being distinctly impressed with the fact that the main line would have to be maintained until that date.

If we are at all right thus far, it follows that the true answer to the question stated at the beginning of this argument is, that there is no difference in legal effect between the two grants there attempted briefly to be described. If there be any difference between such grants, the second one is stronger than the first. The first is potential; the second is imperative. It is enough, however, to show that they are the same. Each involves the exercise of the renewal power, to say nothing of

the other statutory powers mentioned; for otherwise it would have to be held that the act really done by the council was invalid, despite the express statutory power to do it. But we said all we wish to express in this regard in our former briefs.

If it should be suggested that the ordinance under discussion is not relevant to the present case, a conclusive answer will be found in our contention made both in the briefs and oral argument, that the expiration of the Garden Street branch was made coincident with that of the main line, no matter whether the Garden Street branch be considered as an extension of the main line or as an independent line. In either case, the Euclid Heights extension ordinance is germane; because, as we insist, it prolongs the grant for the main line until July 1, 1914, and so carries with it the grant of the Garden Street branch. We are entitled to have the question of expiration of the grant for this branch considered in connection with the expiration fixed for the grant of the main line. We are entitled to this independently of all other questions presented and argued in this cause; for, after all, the Euclid Avenue main line and the Garden Street branch have been linked together so often and in so many ways under the city ordinances and resolutions, that the expiration of the grant of either one cannot be determined without considering the term of the other.

Respectfully submitted.

WILLIAM B. SANDERS,
JOHN W. WARRINGTON,
Of Counsel for Appellant

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In the Supreme Court of the United States.

OCTOBER TERM, 1906.

No. 197.

THE CLEVELAND ELECTRIC RAILWAY COMPANY,

Appellant,

vs.

THE CITY OF CLEVELAND

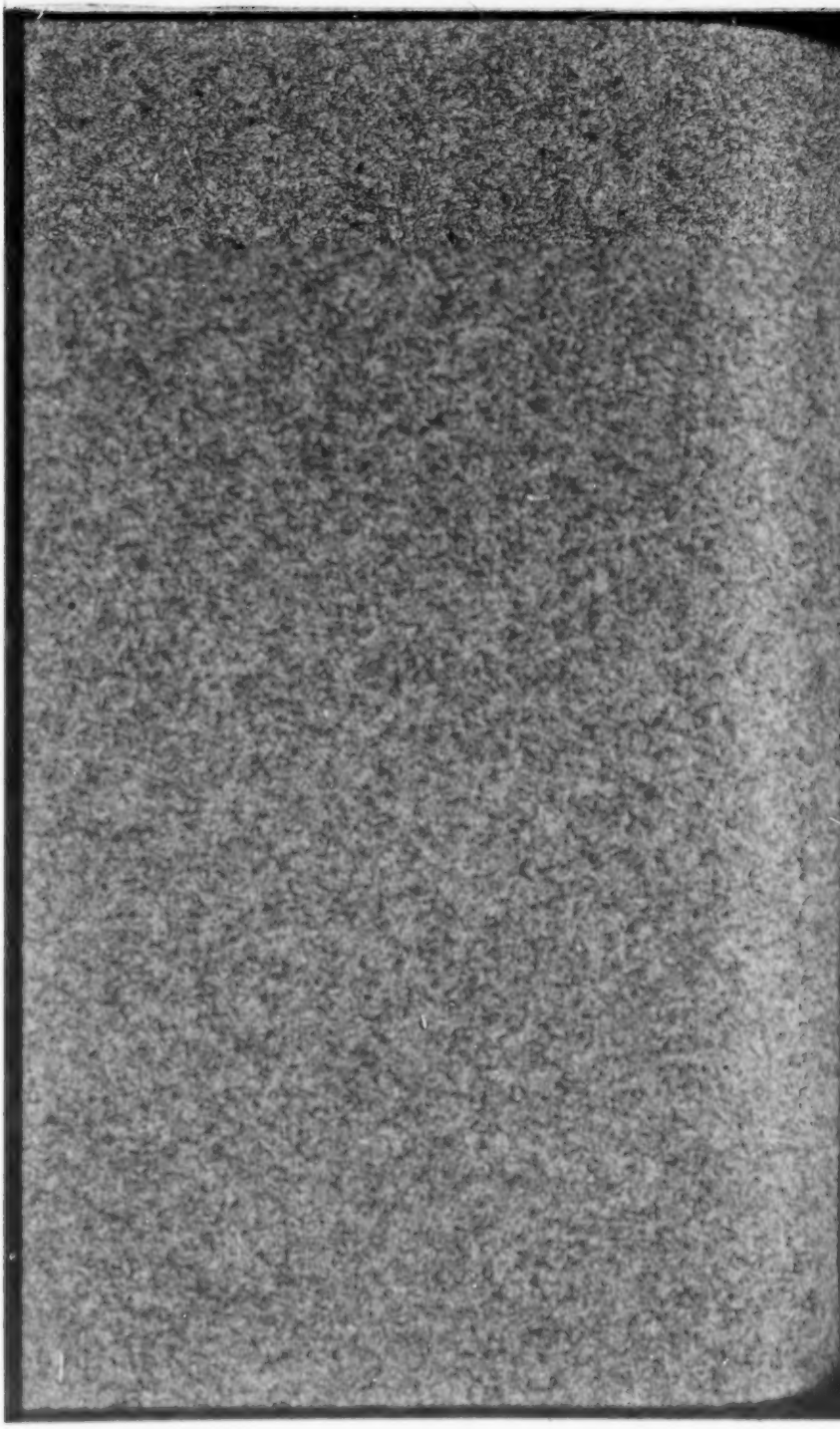
AND

THE FOREST CITY RAILWAY COMPANY,

Appellees.

Affidavit for Appellees
on
Motion of Appellant for Injunction.

NEWTON D. BAKER
D. C. WESTENHAVER,
Counsel for Appellees.



In the Supreme Court of the United States.

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Counsel for Appellees.

COMMERCIAL PRINTING & PUBLISHING CO.
CLEVELAND.

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vs.
THE CITY OF CLEVELAND
AND
THE FOREST CITY RAILWAY COMPANY,
Appellees.

UNITED STATES OF AMERICA
THE STATE OF OHIO } ss.
COUNTY OF CUYAHOGA

Affidavit.

Tom L. Johnson being first duly sworn according to law, says that he is Mayor of the City of Cleveland, one of the appellees in the above entitled cause; that, as appears by the Record in said cause, the Hon. R. W. Tayler did on the 4th day of december 1905 pass a final order in said cause, adjudicating and holding that the right of the complainant, The Cleveland Electric Railway Company, to maintain and operate its street railroad upon the street railway route described as commencing at the intersection of Prospect and Erie Streets in the City of Cleveland, thence southerly on, over and along Erie Street to Central Avenue; thence easterly on, over and along Central Avenue to Lincoln Avenue; also commencing at the intersection of Quincy Street with Willson

Avenue in said City; thence easterly on, over and along Quincy Street to Woodland Hills Avenue, expired on the 22nd day of March 1905, which decree was pursuant to an opinion delivered by said judge on the 24th day of April 1905, holding that the franchise to operate the Garden Street branch, including all of its extension and additional tracks, expired on said 22nd day of March 1905, which said Garden Street branch includes all the tracks of the complainant company in the streets enumerated in the final decree as passed and as hereinbefore referred to; and this affiant says that subsequent to the opinion delivered by the said Hon. R. W. Tayler, and about the 12th day of June 1905, this affiant, as Mayor, wrote and sent to The Cleveland Electric Railway Company the following letter:—

"June 12th, 1906.

THE CLEVELAND ELECTRIC RAILWAY COMPANY,
CLEVELAND, OHIO,

Gentlemen:—

Efforts to adjust the question of a renewal of your grants having proved futile and having been abandoned by you, I feel it my duty to take up the question of your continued operation of lines upon which the grants originally given by the City have expired. Several such cases exist, as you know, but by far the most important of them is the Central Avenue and Quincy Street line, where, as the Court has held, the Company is operating without right and under conditions as to fare which are far less liberal to the public than any recent ordinance of the counsel would warrant. During the pendency of the litigation involving the validity of grants made to the Forest City Railway Company, it would perhaps be inconvenient for the City to take up the question of a grant upon those lines to any other company, but as the President of your Company has admitted that this litigation, preventing as it does the operation of the lines in question

at three cent fare, is instigated by you and for your benefit, it ought not in justice to be permitted to work a prolongation of your exaction of a fare higher than others are willing to accept for the same service, nor should the City, by passing the expiration of your grants unnoticed, be put in the position of acquiescing in the conditions under which you operate. Of course the continued operation of the lines in question is important, and I have no doubt that you and the City authorities can arrive at some temporary arrangement which will accomplish that object and at the same time safeguard the City and those who use the cars.

To discuss such an arrangement I invite you, by such representatives as you may select, to attend a meeting in the Mayor's Office at 12 M. o'clock Monday, June 19th, 1905.

Very truly yours,

TOM L. JOHNSON,

Mayor."

and that thereafter Mr. Horace E. Andrews President of The Cleveland Electric Railway Company, and this affiant orally discussed the matters referred to in this letterat a public hearing in the office of the Mayor of the City of Cleveland, an agreement being reached which was evidenced by the following letter sent by The Cleveland Electric Railway Company, by Horace E. Andrews as President, on the 26th day of June 1905 to this affiant.

"HON. TOM L. JOHNSON,

Mayor.

Dear Sir:—

In accordance with our oral understanding, and in reply to your letter of June 12, 1905, we desire to say that inasmuch as the date of expiration of the franchise rights of this company in Central Avenue and Quincy Street is questioned and has not been finally passed upon by the courts, the company will

refund the net profits from the operation of its cars upon the portions of the streets in question, subsequent to March 22, 1905, provided that the Supreme Court of the United States shall hold that its rights expired on that date.

In determining what the net profits are in this period, there shall be deducted from the estimated gross earnings of the lines in the parts of streets above mentioned; the operating expenses, the taxes, the depreciation charges, and 6 per cent. interest upon the value of the physical property in any way used for or contributing to the service rendered upon said portions of lines.

By this statement we endeavor to insure the City that the company is not desirous of availing itself of profits from the operation of any line which it may not have any legal right to operate and that it will continue the service upon the portions of streets referred to without profit to itself beyond a reasonable interest upon the value of its property, if the Courts shall determine that its rights therein have expired. If the company's contention that its grants have not expired is maintained, it will, under this arrangement, suffer no loss. In either case entire justice will be done to both the City and the company.

If prior to final decree in the Supreme Court, an extension or renewal of grants be made by the City to this company for the lines of railway operated by it in Cleveland, this agreement on the part of the company is to become void and of no effect.

If this arrangement is made, it is understood that it is to be without prejudice to the right of the City or the company.

We have not attempted to prepare any resolution or ordinance for consideration by the City Council reciting the proposal herein made by us, believing

that such a resolution or ordinance should more properly be drawn by the City authorities.

THE CLEVELAND ELECTRIC RAILWAY CO.,
BY HORACE E. ANDREWS,
President."

This affiant says that thereupon he caused to be prepared and submitted to The Cleveland Electric Railway Company the following form of agreement:—

"*Whereas*, The Circuit Court of the United States for the Northern District of Ohio, Eastern Division, has decided that the right of The Cleveland Electric Railway Company to operate in Central Avenue and Quincy Street expired on the 22nd day of March 1905; and

Whereas, The Cleveland Electric Railway Company, claiming a longer right to operate in in said streets, is perfecting an appeal to the Supreme Court of the United States for a review of said question; and

Whereas, The right of the Forest City Railway Company to operate a street railroad in said streets is in litigation, and is undetermined; and

Whereas, it would cause inconvenience to the public and to The Cleveland Electric Railway Company to suspend the operation of cars in said streets pending the determination of the matters now in litigation; and,

Whereas, The Cleveland Electric Railway Company desires to continue the operation of its cars in said streets but is unwilling to take any advantage of said continued operation beyond the real date of the expiration of its franchise rights therein;

NOW, THEREFORE, this agreement, made on the 26th day of June, 1905, by and between the City

of Cleveland and The Cleveland Electric Railway Company WITNESSETH:

That for and in consideration of the City of Cleveland, by its legislative and administrative officers, refraining from interfering with the continued operation of the cars of The Cleveland Electric Railway Company in Central Avenue and Quincy Street, as said cars are now operated, The Cleveland Electric Railway Company, agrees that it will, immediately upon the signing of this agreement, report to the City of Cleveland the daily gross receipts upon the Central Avenue and Quincy Street lines separately, from the 22nd day of March 1905, to the 1st day of June 1905 and thereafter and until the final adjudication of the case of The Cleveland Electric Railway Company against the City of Cleveland, now pending in the Circuit Court of the United States for the Northern District of Ohio, Eastern Division, involving the right of said company to operate in said Central Avenue and Quincy Street, making similar reports monthly on the 1st day of each month, covering daily gross receipts for the preceding calender month, or part thereof, the gross receipts of the Quincy Street line being determined by taking 22.67 per cent. of the aggregate receipts of the Scoville-Pearl line as now operated. From the aggregate of gross receipts so reported, there shall be deducted for operating expenses, taxes and repairs, 60 per cent.; from the remaining 40 per cent. of said aggregate sum, there shall be deducted such a sum as will be for the time at the rate of two thousand, three hundred and sixty-three and sixteen one-hundredths dollars (2,363.16) per month, said sum of $2,363.16 being the interest for one month on $567,160, at the rate of 5 per cent. per annum, said sum of $567,160 being the value of 10.312 miles of single track, including all equipment, power houses, car stations and appliances, at the rate of $55,000.00 per mile; the net sum so remaining after making thedeductions herein before

provided, shall be due to the City of Cleveland from The Cleveland Electric Railway Company, in the event of a decision by the Supreme Court of the United States, that the right of the said company in said streets has expired, and said sum so fixed shall be payable to from The Cleveland Electric Railway Company to the City of Cleveland as follows:

Upon the date of such decision by the Supreme Court of the United States there shall be paid, with interest at 5 per cent. compounded semi-annually, the sum as herein provided for the time from the said 22nd day of March 1905, to the date of such decision, the monthly sums for the purpose of calculating interest being deemed due on the 10th day of each month for the preceding month; and thereafter on the 10th day of such succeeding month there shall be paid the amount determined to be due by the report for the preceeding month, all payments to be determined as herein provided. This agreement shall continue after such decision by the Supreme Court of the United States and until replaced by some other agreement between the parties hereto or until the Quincy Street and Central Avenue lines of street railway cease to be operated by The Cleveland Electric Railway Company. Either party shall have the right after the decision of the United States Supreme Court to terminate this agreement on 30 days' notice to the other.

Witness the signature of the City of Cleveland by the Mayor, thereunto duly authorized by resolution of the council, and the Cleveland Electric Railway Company by its president, thereunto duly authorized by resolution of the board of directors, affixed hereto on the day first above written."

This affiant says that after the preparation of said proposed form of agreement this affiant and Horace E. Andrews, Esq., President of The Cleveland Electric Railway

Company, met publicly in the Mayor's Office and discussed the terms of the said proposed agreement in an effort so to amend the same as to cause it to be satisfactory, but that The Cleveland Electric Railway Company, by its President, refused to suggest such amendments in the proposed form, or to propose any other form of agreement, and that as a result of said meeting the said The Cleveland Electric Railway Company refused to enter into any such agreement beyond an expression of willingness on its part to have an accounting when the decision of this cause in this court should be made upon a basis then to be determined, which this affiant then said was a mere agreement on the part of the said The Cleveland Electric Railway Company and the City to have a lawsuit, and would not then settle any basis for the continued occupancy of the streets in question by the said company should such occupancy subsequently be held to be without warrant of law.

This affiant says that the City of Cleveland and he, as the chief executive officer of said City, have at all times been willing to permit the complainant company to continue the operation of its cars in the streets in question under such safeguards as would insure a just recognition of the rights of the City and its people, either in a lower rate of fare, or by an accounting for the profits in excess of a fair return upon the actual investment pending the determination of this Court of the question raised by the appeal, and that this affiant believes the Council of the City of Cleveland is now willing to grant to the complainant company any additional facility or rights which it may require for the orderly and efficient operation of the various lines of street railway owned and operated by it, as to which the right of operation has not expired; and this affiant says that both before and since litigation began the Council of the City of Cleveland, while this affiant was Mayor thereof, have granted to the complainant company

many such rights to additional facilities and tracks. This affiant says that subsequent to the date of the passage of the ordinance exhibited in the Bill of Complaint in this action, attempting to grant to the Forest City Railway Company the renewal right to maintain and operate the existing street railroad in streets in controversy in this action, to-wit: on the 24th day of September 1906, the Council of the City of Cleveland passed an ordinance granting to the Forest City Railway Company the right to extend its existing street railroad by constructing the necessary tracks and appliances in said streets, which said last-mentioned ordinance this affiant says authorizes The Forest City Railway Company to construct, equip and operate an extension of its existing street railroad on all the streets and parts of streets as to which the rights of the complainant company were adjudged by the Hon. R. W. Tayler in the Circuit Court of the United States to have expired. That this affiant, after the maturity of the passage and acceptance of this ordinance by The Forest City Railway Company, was charged with the duty of putting said The Forest City Railway Company in possession of said streets, but that the complainant company continued to occupy all of said streets to the exclusion of the said Forest City Railway Company, and as has heretofore been shown without any agreement between it and the City of Cleveland as to its continued occupancy thereof, and without any other claim of right than that adjudged by the Circuit Court of the United States to have expired on the 22nd day of March 1905. This affiant says that he thereupon directed The Cleveland Electric Railway Company to cease operation of its cars upon a portion of Erie Street extending from Prospect Avenue to Central Avenue for the purpose of permitting The Forest City Railway Company to enter upon it and begin the necessary construction therein. The affiant says that the said portion of Erie Street was selected for the reason that all the lines of

cars operated by the complainant company, including the lines upon streets covered by this cause, could be conveniently operated without the use of the tracks in said portion of Erie Street, without inconvenience to the complainant or to the people of the City of Cleveland and without interrupting the operation of the cars of the complainant company even upon the streets and parts of streets as to which the Circuit Court of the United States, as hereinbefore shown, adjudged its rights to have expired.

This affiant further says that the action of the City of Cleveland in this behalf was not arbitrary or oppressive, but was in direct pursuance of the authority of said City conferred upon it by the laws of the State of Ohio, as recognized and sanctioned by the Circuit Court of the United States in its decree, and as stated by the Hon. R. W. Tayler in his opinion, which is the basis of said decree, the said Court saying, as appears in the Record of said cause, page 275,

> "The City has its rights in those streets which it can simply assert; * * * but it (the complainant) would not be entitled to any injunction against the City's proceeding to do such acts in Central Avenue and other streets along which this track is laid as they could do with respect to any other street upon which any other person has a structure, or was maintaining that which was there, without authority of law. Its rights there are the same as elsewhere."

This affiant further says that the complainant company, pending the determination of this appeal, is continuing to charge a cash fare of five cents and is selling eleven tickets, each ticket good for one fare, at fifty cents, while the ordinance of the 24th day of September 1906, to which this affiant has previously referred as granting to The Forest City Railway Company the right to construct and operate a street

railroad in said streets, limits the rate of fare to the maximum of three cents, and reserves the right to the Council under certain conditions to decrease said rate of fare, and to revoke and rescind the said grant so as to preserve to the City of Cleveland complete control over the operation of said street railroad in said streets.

And this affiant says that all the actions of the City of Cleveland complained of in the motion for a temporary injunction in this cause are regular and in pursuance of law. That they are not oppressive or arbitrary, but are an effort on the part of the constituted authorities of the said City both to perform their legal duty and to secure for the people of said City the advantages of the lowest rate of fare in their transportation facilities, and further this affiant saith not.

TOM L. JOHNSON.

Sworn to before me by the said Tom L. Johnson and by him subscribed in my presence this third day of November, A. D. 1906.

J. M. CRAWFORD
Notary Public within and for the County of Cuyahoga and State of Ohio.

[NOTARIAL SEAL]

FILE COPY.

In the Supreme Court of the United States.

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JAMES H. McKENN
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No. 197.

THE CLEVELAND ELECTRIC RAILWAY COMPANY,

APPELLANT,

vs

THE CITY OF CLEVELAND AND THE FOREST CITY RAILWAY COMPANY,

APPELLEES,

AND

No. 321.

THE CITY OF CLEVELAND AND THE FOREST CITY RAILWAY COMPANY,

APPELLANTS,

vs.

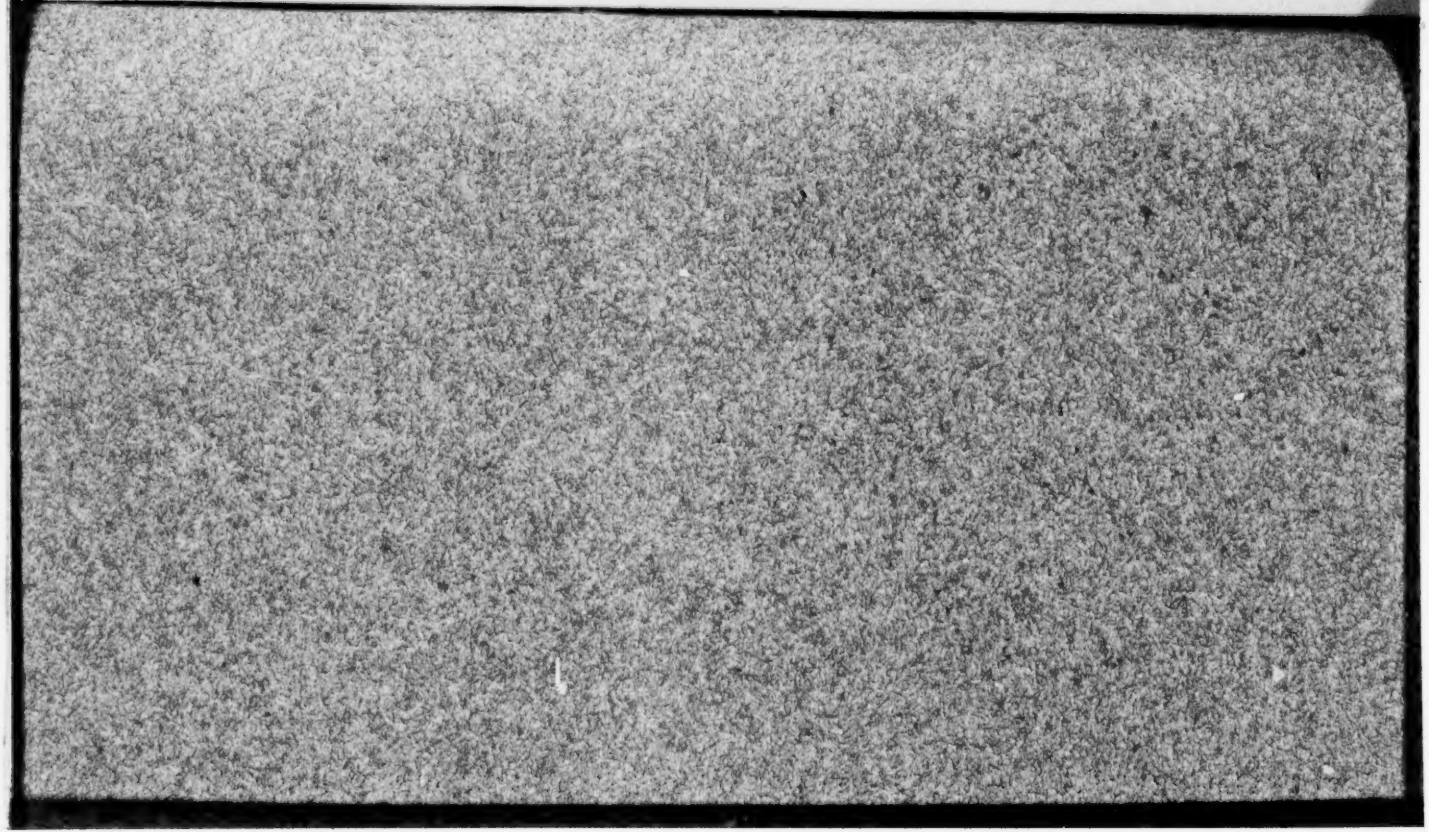
THE CLEVELAND ELECTRIC RAILWAY COMPANY,

APPELLEE.

Brief for The Forest City Railway Company.

D. C. WESTENHAVER,
Counsel for The Forest City Railway Company.

GARFIELD, HOWE & WESTENHAVER,
Of Counsel.



In the Supreme Court of the United States.

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In the Supreme Court of the United States.

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APPELLEES,

AND

THE CITY OF CLEVELAND AND THE FOREST CITY RAILWAY COMPANY,

APPELLANTS,

vs.

THE CLEVELAND ELECTRIC RAILWAY COMPANY,

APPELLEE.

Brief for the Forest City Railway Company.

The Cleveland Electric Railway Company filed its bill for the purpose of having declared null and void an ordinance passed by the City of Cleveland on the 11th day of January, 1904, and to enjoin any proceedings in the performance of it. This ordinance purported to grant the right to The Forest City Railway Company to maintain and operate a street railway on certain streets in the City of Cleveland. The right thereby conferred was to mature and become effective as of the 22nd day of March, 1905, at least so far as the occupancy and possession of the streets in question were concerned.

This ordinance, The Cleveland Electric Railway Company asserted, was a law of the State of Ohio, and was invalid for two reasons:

First: It impaired, if enforced, the obligation of certain pre-existing contracts made between the plaintiff and its predecessors in title and the City of Cleveland, by virtue of which the plaintiff was entitled to maintain and operate a street railway in the same streets to the 13th of July, 1913, or some still later date.

Second: It deprived, if enforced, the plaintiff of its property in its tracks, poles, wires and appliances, without due process of law.

Such proceedings were had that the Circuit Court for the Northern District of Ohio on the 4th of December, 1905, made a decree in which it was adjudged:

1. That the plaintiff's right to maintain and operate a street railroad on the street railway route in question expired on the 22nd day of March, 1905, and that the ordinance in question did not impair the obligation of any of the plaintiff's contract rights.

2. That the ordinance of January 11, 1904, purporting to grant the right to The Forest City Railway Company to maintain and operate a street railway in said streets was inoperative to confer on said Company any right to take the tracks, poles and wires and appliances of the plaintiff in and along said streets, as to do so would be the taking of the plaintiff's property therein without due process of law.

3. That The Forest City Railway Company be enjoined from interfering in any manner with the plaintiff in its peaceable possession of its said tracks, poles, wires and other appliances, and that the City of Cleveland be enjoined only from attempting to deliver possession of said tracks, poles, wires and other appliances to The Forest City Railway Company. (Record page 276.)

It is to this decree that the plaintiff below, The Cleveland Electric Railway Company, has prosecuted its appeal, assigning various grounds of error which may be summarized as follows:

1. It was error to adjudge and decree that the right of the plaintiff to operate its street railway upon the street railway route in question expired on the 22nd of March, 1905.

2. It was error to refuse to adjudge and decree that the ordinance of January 11, 1904, impaired the plaintiff's contract rights with the City, inasmuch as the plaintiff asserts that it was authorized by such contracts to maintain and operate the street railway upon said route until at least July 13, 1913.

3. It was error to refuse to adjudge and decree that the said ordinance of January 11, 1904, was null and void because it purported to renew to The Forest City Railway Company a grant, which at the time of said attempted renewal, belonged to the complainant.

The defendants below, The Forest City Railway Company and the City of Cleveland, have also prosecuted an appeal to the same decree assigning several grounds of error, which, however, may be briefly stated as complaining of the decree so far as it held the said Ordinance of January 11, 1904, was inoperative to confer upon The Forest City Railway Company a right to take the tracks, poles, wires and appliances erected and maintained by the plaintiff in said streets at the expiration of its franchise, and because it held that the provisions of said ordinance and the alleged acts of the defendants threatened to deprive the plaintiff below of its property therein without due process of law.

STATEMENT OF FACTS.

The street railway route in question was formerly owned by The East Cleveland Railroad Company. This Company was, on March 25, 1893, consolidated with The Broadway and Newburgh Street Railroad Company, creating by the consolidation, the plaintiff, The Cleveland Electric Railway Company.

The route in question is described as follows:

> "Commencing at the intersection of Prospect and Erie streets in the City of Cleveland; thence southerly on, over and along Erie street to Central avenue; thence easterly over Central avenue to Lincoln avenue; also commencing at the intersection of Quincy street and Willson avenue; thence over Quincy street to Woodland Hills avenue."

At the time some of the ordinances of the City of Cleveland were passed to which reference will be made, Central avenue from Erie street eastwardly to Brownell street was know as Ohio street, and from Brownell street eastwardly to the terminus thereof, it was known as Garden street.

The East Cleveland Railroad Company was incorporated in 1859. On November 1, 1850, July 3, 1860, and April 15, 1862, the Council of the City of Cleveland passed resolutions granting permission to this Company to construct, maintain and operate a street railroad which, when complete, extended from Water street eastwardly through Superior street to the Public or Monumental Square, through the Square and Superior street to Erie street; thence southerly in Erie street to Prospect street; thence eastwardly in Prospect street to Case avenue; thence northwardly on Case avenue to Euclid avenue; thence eastwardly on Euclid avenue to Willson avenue, at that time the city limits of the City of Cleveland.

This grant was for a term of twenty years from and after the 20th of September, 1859, and was subject to the conditions of a general ordinance in relation to street railroads passed September 20, 1859. (Record pages 182-4; 250.)

On July 23, 1862, the Trustees of East Cleveland township authorized the Company to construct and operate a street railroad eastwardly in Euclid avenue from the intersection of Willson avenue to what was then called Doan's Corners, and afterwards Fairmount street. The resolution of the Trustees fixed no time limit during which the road might be operated.

Subsequently various additional privileges were conferred, such as were necessary to double track the street railway and to extend it to points still farther east than Fairmount street, and to change the route through the Public Square; but this street railway route commencing at Water street and following Superior, Erie, Prospect, Case and Euclid has been ever since known as the Euclid avenue line, or the main line of The East Cleveland Railroad Company.

On January 14, 1868, the Council of the City of Cleveland adopted a resolution creating the street railway route, and authorizing the construction and operation of a street railroad thereon, now in dispute in this case, namely, the Garden Street or Central Avenue line.

The resolution granting permission to construct and operate recites that The East Cleveland Railroad Company had theretofore applied for leave

> "to construct a street railroad from the intersection of Prospect and Brownell streets to connect with the main line of its railroad; thence along the center of said Brownell street to its intersection with Garden street; thence easterly along the center of Garden street to and across Willson avenue to the easterly boundary of said City." (Record 188.)

The grant was made as an original and independent route after public notice and competition as to rate of fare.

The acceptance of this resolution by the Company describes the route as

> "A street railroad from their main track in Prospect street, through Brownell to Garden, and through Garden street to the easterly line of the city."

On March 30, 1868, the Council of the Village of East Cleveland passed an ordinance and also a resolution authorizing The East Cleveland Railroad Company to construct and operate a street railroad along the following streets in said Village, to wit:

> "Beginning at the termini of its branch road at the easterly line of the City of Cleveland in Willson avenue; running thence easterly in the center of Garden street to its intersection with the center line of Baden street; thence southerly on said center line to the southerly line of Wade street."

The ordinance, it will be noticed, does not fix any date for the expiration of the grant; but at the same time the Council adopted what it calls "preambles and resolutions," evidently intended to be a part of the ordinance or of the leave and permission given to the Street Railway Company. In these preambles and resolutions permission is given to operate the street railway for a period of twenty years from its completion, and the construction is to commence and to be completed within five years from the date thereof. (Record pages 189, 190.)

The Village of East Cleveland adjoined the City of Cleveland on the east, and the Garden street referred to in the last ordinance was physically a continuation of the Garden Street within the City of Cleveland. The Village of East Cleveland was annexed to the City of Cleveland shortly after this grant was made.

On March 25, 1873, the Council of the City of Cleveland, by resolution, gave leave to The East Cleveland Railroad Company

> "to connect their Garden street branch with the main line of their road at the intersection of Erie and Prospect streets, by laying double tracks from this point through Erie street to Ohio street, and through Ohio street to Garden street, and to remove their track from Brownell street between Ohio street and Prospect street."

This, it will be noted, was the substitution of a new route for the Garden street line, and a new point of intersection with the main line, and the part of the Garden street line on Brownell street was abandoned upon the substitution of this change of route. No date for the expiration of the permission given by this resolution is fixed; but Section 5 provides that all ordinances of the City of Cleveland now in force or that may thereafter be enacted shall apply to this grant. (Record, page 199.)

The general ordinances of the City then in force, provided that its provisions should apply to all grants to maintain and operate a street railway, and that no grant should be made for a longer period than twenty years from the date of each grant. (Record, pages 253, 254.)

On May 23, 1876, the Council of the City of Cleveland passed an ordinance entitled:

> "An ordinance to permit The East Cleveland Railroad Company to extend the Garden street branch of its road."

The extension thereby authorized was:

> "Along Garden street to Baden avenue, and along Baden avenue to Quincy street, and along Quincy street to New street, and along New street to Garden street; there to connect with the Garden street track; and to equip and operate said extension for twenty years in connection with said branch and its main line."

It was further provided that there should be no increase of fare on any part of its said branch or of its main line, or of said extension by reason of said extension. (Record, page 202.)

Previous to May 14, 1878, the statute law of Ohio contained no restriction on the length of the term for which the Council of the City might grant permission to a street railway company to occupy the streets of the city. Since that date, the restriction has been to a term of twenty-five years.

The power of the Council previous to 1878 was contained in an act passed April 10, 1861, 58 O. L., 66, and March 27, 1866, 63 O. L., 55. A provision common to all the legislation on the subject previous to 1878 is contained in Section "5" of 58 O. L., 67, and is as follows:

> "Sec. 5: That hereafter no street railroad shall be constructed or commenced until the consent of the City Council or corporate authorities of the city, town or village wherein such road is to be constructed shall have been first obtained; and it shall be competent for the City Council or corporate authorities of any city, town or village to agree with any street railroad company organized in pursuance of this act, or with any individual or company of individuals desiring to construct a street railroad in said city, town or village upon the manner and upon the terms and conditions upon which such corporation, individual or company of individuals shall construct and operate a street railroad in said city, town or village."

The general ordinance of the City of Cleveland passed September 20, 1859, and subject to which the original line of The East Cleveland Railroad Company was constructed contained the provision that no contract should be for a longer period than twenty years from the date of the passage of that ordinance. (Record, page 252).

A similar provision is found in the general ordinances

of the City of Cleveland passed December 4, 1866, and March 12, 1877, which continued in force until after the Legislature imposed the restriction already mentioned. (Record, pages 256, 260.)

On June 12, 1879, 79 O. L., page ——, the Legislature passed an act authorizing councils of municipalities to renew any grant previously made

> "at its expiration upon such conditions as may be considered conducive to the public interests,"

On September 8, 1879, The East Cleveland Railroad Company applied for a renewal

> "of the grant and license heretofore made and issued to said Company for the use and occupancy of the several streets in and through which said Company's tracks are now laid and its said road is now operated."

The petition represents that the original grant

> "was for a period of twenty years as then fixed by law and by the provisions of a general ordinance passed September 20, 1859."

On September 15, 1879, the Council of the City of Cleveland passed an ordinance entitled:

> "An ordinance granting a renewal of franchise to The East Cleveland Railroad Company to construct, maintain and operate a street railroad in and through certain streets of the City of Cleveland."

The ordinance authorized the Company

> "To re-construct, maintain and operate its double track street railroad, with the necessary switches and turn-outs and turn-tables as heretofore constructed and now maintained and operated in the City of Cleveland, commencing on Superior Street at the intersection of Water Street; thence through Superior Street to and around the southwest corner of Monumental Square to Euclid Avenue; thence

through said Avenue to Erie Street; then through said Erie Street to Prospect Street; thence through Prospect Street to Case Avenue; thence through said Case Avenue to Euclid Avenue; thence through and along Euclid Avenue to Willson Avenue."

It will be noted that no part of the territory covered by the Garden Street line or route or branch, whatever it may be called, is included in the renewal; also that no part of the Euclid Avenue line or the main line, whichever it may be called, east of Willson Avenue is included. The renewal itself was for a period of twenty-five years from the 20th day of September, 1879, making the same expire on the 20th day of September, 1904. (Record, page 204-207.)

Afterwards on the 4th day of April, 1883, the Council of the City of Cleveland, passed another ordinance entitled:

"An ordinance granting to The East Cleveland Railroad Company the right to extend, lay and operate its double track in Euclid Avenue from the west line of Willson Avenue to the west line of Fairmount street."

It was provided by Section "3":

"That the right of said Company to have and operate its said railroad on said Euclid avenue between the west line of Willson avenue and the city limits shall terminate on the 20th day of September, A. D. 1904, with the said renewal of that part of said Company's line lying west of said Willson Avenue."

Thus it will be seen that by these two renewal ordinances, one passed in 1879, and the other April 4, 1883, the right to construct, maintain and operate the Euclid Avenue line or main line from Water Street to Fairmount Street was conferred upon the Company; that the date of expiration for the street railway on the streets or the route therein described was fixed as the 20th of Sep

tember, 1904; that as to this main line the renewal grant was made as to one part at one time and as to another part at another time, and in two separate ordinances, and that neither ordinance included any part of the Garden Street line, route or branch, or any of the streets covered thereby. (Record, page 209.)

On March 22, 1880, in the interval between the passage of the two ordinances referred to, the Council of the City of Cleveland passed another ordinance entitled:

> "An ordinance to permit The East Cleveland Railroad Company to extend the Garden Street branch of its railway."

By this ordinance, The East Cleveland Railroad Company was authorized:

> "to extend the Garden street branch of its railway from the present track at the intersection of Baden avenue and Quincy street in an easterly direction on and along the said Quincy street to the intersection of Lincoln avenue, and to equip and operate the said extension and its Garden street branch for the period of twenty-five years from and after the passage of this ordinance." (Record, page 208.)

This is the ordinance which the City of Cleveland and The Forest City Railway Company contend, is the foundation of The Cleveland Electric Railway Company's right to maintain its Central Avenue or Garden Street line. It is not contended by anybody that there was any express renewal of the right to operate the Garden Street line made at any subsequent date; and it is contended that none of the ordinances subsequently passed by the Council furnishes any basis for the assumption that the date of expiration has been expanded by inference or implication.

This ordinance was vigorously litigated in the Courts of Ohio, and it was held that this ordiance operated as a surrender by the Company of its antecedent grant on the territory thereby covered and a renewal to the Company for a

term of twenty-five years. (Record, page 168.)

State v. East Cleveland R. R. Co., 6 C. C., 318.

On February 9, 1885, the Council passed an ordinance entitled:

> "'An ordinance to permit The East Cleveland Railroad Company to extend the Garden street branch of its railway."

This ordinance authorized the Company,

> "to extend the Garden street branch of its railway from the termini of its present track at the intersection of Quincy street and Lincoln avenue in an easterly direction on and along Quincy street to Woodland Hills avenue, and to equip and operate said extension * * * in connection with said branch and its main line, and terminating with the grant for the main line; but with the express condition that no increase of fare shall be charged by said Company on any part of its main line or on said extension by reason of said extension." (Record, page 211.)

This is the grant for the Company's line in Quincy street east of Lincoln Avenue. The ordinance as printed on page 211 omits the words "and terminating with the grant for the main line"; but both bill and answer in pleading this ordinance aver that these words are contained in it, and the fact is admitted that the original ordinance contains these words. The opinion of the court below so quotes it. (Record, pages 117, 168.)

On June 18, 1887, the Council of the City of Cleveland passed an ordinance entitled:

> "An ordinance to permit The East Cleveland Railroad Company to extend the Garden street branch of its railway."

This ordinance authorized the Company

> "to extend the Garden street branch of its railway

> from the intersection of its present track with Baden avenue upon Garden street in an easterly direction along and upon Garden street to the easterly line of Lincoln avenue, and equip and operate said extension * * * in connection with said branch and its main line, and terminating with the grant for the Garden tsreet main line, but with the express condition that no increase of fare shall be charged by said Company on any part of its main line or on said extension by reason of said extension." (Record, page 217.)

On July 14, 1888, the Council of the City of Cleveland passed an ordinance entitled:

> "An ordinance granting to The East Cleveland Street Railway Company the right to construct and operate an electric street railway on Euclid and Cedar avenues."

This ordinance granted permission to erect and maintain poles and wires and the necessary appliances and fixtures for conducting currents of electricity to propel and operate cars upon the following named streets in said city, to-wit:

> "Euclid avenue from Willson avenue easterly to the city limits; Cedar avenue from a point near the Cleveland and Pittsburg Railroad Company's right of way in said avenue easterly to a point about 1500 feet east of Fairmount street."

It will be noted that such parts only of the Euclid Avenue or main line as were east of Willson Avenue, and such of the Cedar Avenue line as was east of The Cleveland & Pittsburg Railroad Company's right of way were included in this ordinance, so far as it authorized or required equipment by electricity; but Section "8" provided that whenever the Council should require, the Company should use the same system as herein provided on the entire length of their main and Cedar Avenue line.

Section "6," however, provided as follows:

"Sec. 6. The privilege of constructing the electric system and the operation of its lines, as hereinbefore provided, is granted in consideration of the improved facilities hereby contemplated and the large expenditure necessary to secure the same, and shall be in force for a period of twenty-five years from and after the date of the passage of this ordinance upon its main and Cedar avenue lines, but nothing herein shall be so construed as to authorize any increase of present fares for transportation over any portion of said company's lines; Provided, that if the said East Cleveland Railroad Company shall, by said electrical system, fail to provide a mode of transit which shall be deemed satisfactory to the Board of Improvements, or if, from any cause, said company shall fail to extend the said electrical system over their entire main and Cedar avenue lines within eighteen months from date of passage of this ordinance, then said ordinance shall be null and void so far as it relates to extension of charter." (Record, pages 219-221.)

The Council by resolution adopted May 13, 1889, required the Company to extend its electrical equipment over its main and Cedar Avenue lines to the westerly termini thereof, and the Euclid Avenue line from Water Street easterly to Willson Avenue and the Cedar Avenue line to its intersection with the Euclid Avenue line was equipped with electricity in accordance with the provision of the ordinance of July 14, 1888, and of this resolution.

It will be again noted that no part of the route or streets referred to in the various ordinances as the Garden Street branch, or the Garden Street main line, or the Garden Street route, was included either in this ordinance or resolution or in the equipment erected and installed in compliance therewith.

On March 10, 1890, the Council of the City of Cleve-

land passed another ordinance entitled:

> "An ordinance granting to The East Cleveland Railroad Company the right to substitute electric motive power for horse power upon its Garden Street branch."

This ordinance authorizes the Company

> "to operate its Garden street branch by electricity, *i. e.*, from the intersection of Prospect and Erie streets, along Erie street to Ohio street, along Ohio street to Brownell street, along Brownell street to Garden street, and along Garden street to Lincoln avenue; also along New street from Garden street to Quincy street, and along Quincy street to Woodland Hills avenue, and authority is hereby granted said Company to erect and maintain on said streets all necessary poles and wires, and the necessary appliances and fixtures for the conducting of electric currents to operate by electric power the said Garden street branch during the term of its present grant for said Garden street branch." (Record, page 225.)

On March 30, 1891, the Council of the City of Cleveland passed another ordinance entitled:

> "An ordinance to grant to The East Cleveland Street Railroad Company the right to construct and operate a second or additional track on Central avenue from the east line of Willson avenue to the right of way of The Cleveland and Pittsburgh Railroad Company."

The ordinance authorized the Company

> "to lay and operate a second or additional track in and upon Central Avenue from the east line of Willson avenue to The Cleveland and Pittsburg Railroad tracks, and to connect said tracks herein authorized with the tracks now in and upon Central avenue at Willson avenue and at the Cleveland and Pittsburg railroad tracks."

Garden street had, before the passage of this ordinance,

been changed to Central Avenue. The ordinance further provided:

> "The right herein granted shall be valid until the expiration of the grants for the said Company's main line." (Record, page 227.)

On April 20, 1891, the Council of the City of Cleveland passed another ordinance entitled:

> "An ordinance to grant to The East Cleveland Railroad Company permission to lay an additional or second track in Quincy street from New street to Woodland Hills Avenue."

The ordinance authorized the Company

> "To lay and operate a second or additional track in and upon Quincy street form New street to Woodland Hills Avenue, and to connect the tracks herein authorized with the tracks now laid upon New street as per plat accompanying the petition of said Company."

The ordinance also contained a further provision:

> "The right herein granted shall be valid until the expiration of the grants of said Company's tracks on said Quincy street east of Lincoln avenue, to-wit, July 13, 1913." (Record, page 228.)

On May 22, 1893, The Cleveland Electric Railway Company sent a cummunication to the Council of the City of Cleveland. In this communication it advised the Council that The Cleveland Electric Railway Company was organized on the 25th day of March by the consolidation of The East Cleveland Railroad Company and The Broadway and Newburg Street Railway Company; that on the 24th day of April, 1893, it was further enlarged by consolidation with The Brooklyn Street Railroad Company and The South Side Street Railroad Company. The Council is advised by the Company that it believed these consolidations to be legal, and that they were made under advice of counsel; but inasmuch as some question had arisen as to the intention of the Company, it stated officially that it did not claim any rights greater

than the constituent companies forming the organization; that it intended to obey the ordinances to which each and all of the constituent companies were subject; that it had since the consolidation issued transfer checks to all persons desiring them to enable such persons to have a continuous ride from any east side line to any south side or west side line, and from any south or west side line of the Company to any east side line for one fare, and would continue such system of transfers where it cannot better accomodate its patrons by establishing through lines, and that it disclaims any intention of charging more than one fare for any such continuous ride. (Record, page 230.)

On May 29, 1893, the City Council passed a resolution consenting to the consolidation on condition that only one fare shall be charged for a continuous ride on or over any line of railway formerly owned by any of the constituent companies within the limits of the city, and that passengers on any of such lines paying one fare shall be entitled without extra or additional charge to be transferred to any other of said lines and have a continuous ride thereon for said single fare. (Record, page 230.)

The lines of The Broadway and Newburgh Street Railway Company were at the time of the consolidation limited to expire July 1, 1914. Those of The South Side Street Railroad Company were limited to expire July 13, 1913. Those of The Brooklyn Street Railroad Company were limited to expire January 26, 1910.

(See Supplemental Record.)

The only extension of any part of the tracks of the Garden street or Central avenue line occurring after the consolidation was by ordinance passed June 25, 1894. It is entitled:

> "AN ORDINANCE granting to The Cleveland Electric Railway Company the right to operate and extend its double track street railroad in Quincy

street from New street to Willson avenue."

It grants permission

> "to extend, maintain and operate by means of electricity as a motive power its double track street railroad on and along Quincy street from its present tracks therein westerly to Willson avenue connecting by curves with its Willson avenue tracks."

It was further provided that

> "This grant shall terminate with the grant for said Company's present line in Quincy street. (Record, page 239.)

In consideration of this extension, the Company surrendered its tracks hitherto maintained in New street connecting Garden street or Central avenue with Quincy street.

On February 19, 1894, the Council passed an ordinance creating what is known as the Willson avenue cross-town line. And it is from this ordinance and its provisions that the plaintiff below asserts a right to maintain all of its lines in the City to July 1, 1914, is implied. (Record, pages 235, 238.)

It is entitled:

> "AN ORDINANCE granting permission to The Cleveland Electric Railway Company and The Cleveland City Railway Company to extend their tracks in Willson avenue."

As appears from the ordinance, The Cleveland City Railway Company had tracks in said avenue for a part of the distance, and The Cleveland Electric Railway Company for other parts of the distance. The ordinance authorized both companies jointly to connect the gaps and to extend northwardly to the terminus of Willson avenue.

Section "6" thereof from which prolongation is inferred of the life of all intersecting street railway lines is as follows:

"Sec. 6: A passenger on any car operated on any part of said Willson avenue, on payment of one fare, either in cash or by ticket, shall be entitled, without additional or extra charge, to be transferred to any other line of either of said companies, intersecting or coming to said Willson avenue, including the lines on Broadway, and to have a continuous ride thereon, with the right, without additional or extra charge, to be transferred from such second line to a car on any other line of the company operating the same which crosses the Cuyahoga river, and passengers on any line of either of said companies intersecting or coming to said Willson avenue, including the line on Broadway, shall be entitled, without additional or extra charge, to be transferred to said Willson avenue line and to have a continuous ride thereon. The Council shall at all times have the right to prescribe rules and regulations in respect to the transferring of passengers as provided for in this section." (Record, pages 235-238.)

The Cedar avenue line of The East Cleveland Railroad Company was created by ordinance passed March 6, 1882. (Record, page 261.)

It was established and constructed as an extension of the Euclid avenue or main line of the Company. It was to terminate with the grant for said main line.

On July 21, 1884, and on September 9, 1887, and on February 24, 1888, and on October 13, 1890, further extensions of the Cedar avenue extension were authorized; but each and all of these ordinances expressly follow the language of the original Cedar avenue extension and expressly provide that they shall terminate with the grant for the main line from which the Cedar avenue extension was projected. This date, as we have already seen, was fixed by the ordinance passed July 13, 1888, as twenty-five years from and after that date. (Record, pages 263, 264, 266 and 267.)

The Wade Park line of The East Cleveland Railroad Company was created by ordinance passed April 12, 1889. It was passed as an ordinance authorizing an extension of the Euclid avenue or main line from the intersection of Euclid and Case avenues; and it is expressly limited to expire with the present grant for the main line. (Record, pages 269, 270.)

In consequence of the consolidation of the several companies into The Cleveland Electric Railway Company, and of the passage of the ordinance authorizing the extension on Willson avenue, it was contended below that an entire system had been created by the Council, and that the Council had fixed a uniform date for the expiration of all of the franchises previously granted to the constituent companies and then owned or subsequently acquired by The Cleveland Electric Railway Company, and that the date thus fixed was the date of the last expiring franchise, namely, July 1, 1914, the date of the Willson avenue extension.

The record, however, shows that since such date, the Council has passed a number of ordinances which have been accepted by the plaintiff, and also others which were accepted by The Cleveland City Railway Company fixing other and different dates of expiration.

Among these is an ordinance passed August 8, 1901, authorizing an extension of track from Euclid avenue along the east side of the Public Square to Superior street, in which ordinance it is provided:

"This grant shall expire March 22, 1905."

(Record, page 241.)

Again on June 23, 1902, the Council passed an ordinance authorizing The Cleveland Electric Railway Company to extend its tracks on Erie street from Euclid avenue to St. Clair street, and from Scovill avenue to Woodland avenue which was accepted by the Company. This ordinance also provides:

"That the grant thereby made shall expire March 22, 1905." (Record, page 244.)

In addition to these, there are six other ordinances passed at different times by the Council of the City of Cleveland, and accepted by the plaintiff below or The Cleveland City Railway Company authorizing it to extend its tracks on various streets, all of which are limited to expire on the 22nd of March, 1905.

(See Supplemental Record.)

On or about the first of July, 1903, the plaintiff acquired by purchase, the Council of the City of Cleveland in no manner consenting thereto, all the franchises and street railway lines of The Cleveland City Railway Company. The Cleveland City Railway Company was formed by the consolidation of The Cleveland City Cable Railway Company and The Woodland Avenue & West Side Street Railway Company. The former was operating what was known as the St. Clair street, the Payne avenue and the Superior street lines, under franchises, all of which expire on the 26th of January, 1910.

(See Supplemental Record.)

The Woodland Avenue and West Side Street Railway Company was the owner of the franchise and operating the street railway lines involved in the litigation under review in this Court in the case of *Cleveland vs. The Cleveland Electric Railway Company*, 201 U. S. ,529, and unless extended to a later date in consequence of the matters urged in this litigation, expire on the 10th day of February, 1908.

As already stated, on the 11th of January, 1904, the Council of the City of Cleveland granted to the defendant, The Forest City Railway Company, permission to maintain and operate a street railway on the streets, commencing at the intersection of Prospect and Erie, and including all the territory covered by the Garden street branch or line. If, as

contended by the plaintiff below, its franchises did not expire till a later date, then this ordinance, it is said, impairs the obligation of its contracts, because it purports to give to The Forest City Railway Company the right to maintain and operate a street railway from and after the 22nd of March, 1905.

The other matters involved in this ordinance and in the pleadings bearing on the question of whether or not its provisions, if enforced, would deprive the plaintiff below of any of its property without due process of law, will be stated hereafter when that question is being discussed in connection with the cross appeal prosecuted by the defendant below.

The foregoing is a full review of all of the legislation of the Council of the City of Cleveland, so far as it relates to the Garden street or Central avenue line. There are a number of ordinances in the record dealing with extensions of the Euclid avenue or main line that have not been specifically mentioned because they do not apparently bear on any question to be considered.

Argument.

I.

THE PLAINTIFF'S CONTENTIONS.

The plaintiff in the Court below based its right of relief, so far as the ordinance of January 11, 1904, was alleged to be an impairment of its contract rights, on several grounds which, we think, may be fairly stated as follows:

1. Prior to 1878 the Legislature of Ohio had imposed no limit on the length of time for which permission might be given to operate a street railway, and, therefore, the ordinances and resolutions of the City of Cleveland and the Village of East Cleveland so far as they limited the grants thereby made are void as to the limitation; and the right thus acquired continues during the corporate life of the grantee which, if not perpetual, continues until annulled by the Legislature. And the grants made by such ordinances and resolutions when not limited continue during the corporate life of the grantee.

2. By reason of the merging of all the street railway companies in one, either by consolidation or purchase under the statutes of Ohio, with the requirement that a passenger shall for one fare have a continuous ride in the same general direction over all the lines with certain transfer rights, to enable him to do so, a unified system of street railways was created, and the right to operate all and every part of the system expires at the same date, and that date is the date of the franchise or extension grant last expiring.

3. Because of the obligations imposed by the ordinance of February 19, 1894, authorizing the plaintiff and The Cleveland City Railway Company to extend their respective tracks in Willson avenue, and especially because of the obligations imposed by Section "6" requiring transfers at

intersections, a right arises corresponding to the duty imposed, and since the right of operation conferred by this ordinance purports to continue until July 1, 1914, and the duty of transferring at the Garden street or Central avenue intersection also continues to that date, the right to operate the latter line is, by implication, extended to the same date.

4. The Garden street or Central avenue line is to be regarded as an extension of the main line of The East Cleveland Railroad Company, and expires on July 13, 1915, the date expressly fixed for the expiration of that line; or in any event whether it be regarded as an extension or as an independent line, the date of expiration is in consequence of certain ordinances granting the right to lay additional tracks or to extend tracks in Garden street or Central avenue, prolonged beyond March 22, 1905, the date originally fixed for its expiration, and continues until July 13, 1913.

II

STATUTE LAW OF OHIO.

All of the statute law of Ohio to which reference is made in the course of this argument is, for convenience, printed consecutively in an appendix. Its force and effect, therefore, will only be briefly stated in this connection.

During all the time covered by the transactions in this case, Section 2640 (1536-31) of the Revised Statutes was in existence. This section read in connection with Sections 2601 (1536-66) and 2501 (1536-184) shows that the State in its sovereign character has reserved no property interests in the streets; but the title therein as well as the control over the same has been vested in the municipalities.

Cincinnati Street R. R. Co. vs. Smith. 29 O. S., 643.

The State, while reserving to itself the power of conferring corporate life, has at all times referred street railway

corporations to the municipalities to obtain those privileges or easements in the streets necessary to operate a street railway therein. Section "5," 58 *O. L.*, page 66, was enacted April 10, 1861, and it has in one form or another been continuously in force ever since. And it empowers municipalities to agree with street railway companies on the terms and conditions under which they shall use and occupy the streets.

While plenary power to fix the conditions upon which street railways may be constructed and operated is delegated to the municipalities, certain restrictions have been imposed upon the manner of exercising that power.

Section 2501 R. S. (1536-184) provides, that before any work shall be done in the construction of a street railway, application for leave so to do shall first be made to the Council in writing; that the Council shall prescribe the terms and conditions upon, and the manner in which the road shall be constructed and operated, and the streets and alleys that shall be used and occupied therefor. This proceeding is what is known as establishing a street railway route, and has been the law in one form or another since the act passed in 1866, 63 O. L., page 55.

Section 2502 R. S. (1536-185) provides that no ordinance or resolution shall be passed as provided in Section 2501 to establish or define a street railway route, and no action shall be taken by the Council to invite proposals to construct and operate such railroad until three weeks' public notice shall have been given by advertisement. It also provides that the grant shall be made to the person who will agree to carry passengers at the lowest rates of fare; also that there shall have been previously obtained the consent in writing of a majority of the abutting property owners. This has always been in force since 63 O. L., page 55.

These are the proceedings necessary to the making of an original grant for a street railway as distinguished from a renewal of a grant previously made or from an extension of

the tracks of an existing street railway. The public advertisement and the competition as to the rates of fare and the prescribing of the streets and alleys and the terms and conditions, are the distinguishing features of an original street railway grant.

Previous to May 1, 1869, no provision had been made by statute empowering the Council to authorize an extension of the tracks of an existing street railway. On that date, an act was passed which is now Section 2505 R. S. (1536-188). It provides:

> "The Council of any city or village may grant permission by ordinance to any corporation, individual or company owning or having the right to construct any street railroad, to extend their track * * * when the Council may deem such extension beneficial to the public."

It is further provided that when any such extension is made

> "the charge for carrying passengers on any street railroad so extended and its connections made with any other road or roads by consolidation under existing laws shall not be increased by reason of such extension or consolidation."

The act passed early in 1866, 63 O. L., page 55, has already authorized the consolidation of street railways where their lines connected or might be made to connect.

The written consents of property owners was first required by the act of 1866, and has been the law continuously in one form or another ever since, and applies both to original grants and to track extensions.

Prior to June 12, 1879, no express provision had been made by statute for the renewal of an existing grant, although it had been held that the right to grant included the right to renew; but it was still uncertain what part of the proceedings necessary to be taken in making an original grant had to be

followed in making a renewal of a pre-existing grant.

Haskins vs. Street Railway Co., 4 Law Bull, page 1126.

To meet this situation, on June 12, 1879, Section 2501 was amended by providing that such grant may be renewed,

> "at its expiration upon such conditions as may be considered conducive to the public interest."

It has since been held, and has become the accepted practice that renewals may be made without public advertisement, or competition as to the rate of fare.

Previous to 1878, the Legislature had placed no restriction on the length of term for which the Council might grant the leave and permission to maintain and operate a street railway. In that year, Section 2502 was amended by providing that no grant should be valid for a longer term than twenty-five years, and this was later amended to include renewal grants. At the same time, this section was also amended so as to prohibit the Council from releasing the Grantee during the term of the grant from any obligation or liability imposed thereby.

Section 2505-a R. S. (3443-15) empowers any corporation or company organized for street railway purposes to lease or purchase any other street railroad, including its franchises. The consent of the Council of the city is not made necessary to the validity of such lease or purchase. Nothing is said in this or any other section as to transfer privileges from one line to another so acquired; but it is provided

> "the fare charged for one continuous route or ride in the same general direction over all such leased or purchased lines within any municipal corporation shall not exceed the maximum fare over any one of said lines prior to such lease or purchase."

This was first enacted in the year 1888 (88 O. L., 493).

Section 2505-b R. S. (3443-16) provides that whenever the line of street railway companies as constructed or in process of construction, connect or can be made to connect with one another, they may consolidate themselves into a single company merely by corporate action of the two separate companies. This may be done against the dissent of the Council of the municipality.

Section 3382 R. S. provides that the effect of such consolidation shall be to vest all the rights, privileges and franchises of the constituent company in the new company subject to all the restrictions, disabilities and duties of each of the constituent companies.

Section 1694 R. S. (1536-64) provides that no ordinance or by-law of a municipal corporation shall contain more than one subject which shall be clearly expressed in its title, and that no ordinance shall be amended unless the new ordinance contain the entire ordinance or section revived or amended; and the ordinance or section so amended shall be repealed. The requirements of this section have been uniformly held by the Supreme Court of Ohio to be mandatory and not merely directory.

Elyria vs. Elyria, 57 O. S., 374;
Campbell vs. Cincinnati, 49 O. S., 463;
Bloom vs. Xenia, 32 O. S., 461.

From the foregoing review of the state legislation, it will appear that the Legislature has fully vested all proprietary interest in the streets in the municipalities, and has fully empowered the constituted authorities of the municipality to deal with the same as the owner thereof, and as such to agree with street railway companies on the terms and conditions under which the same may be used.

It further appears that a certain fixed and definite contract between the city and the street railway company is provided both as to an original grant or as to a renewal

grant. The public shall be given due notice of the pendency of the proceedings for the establishment of a street railway route, and the making of a street railway grant; the length of the term is limited and the change of those terms so far as obligations are imposed upon the Grantee is forbidden. Whether for a valuable consideration those obligations may, during the term be changed, is not important; the fact remains that a certain enduring permanency was provided as to a grant once made, and a change of its terms is not to be inferred on slight grounds. The Council having once entered into a solemn grant with all due formality, the citizens have a right to rest quietly in the faith, that its terms will not be affected by ordinances dealing with other subjects and intended to accomplish other objects. A nullification or change of those terms are not, we shall insist, to be inferred from ordinances authorizing merely the extension of tracks, the consolidation of existing lines, or dealing exclusively with other subject matter.

III

RULES OF CONSTRUCTION.

That the rules of construction so vigorously announced by the learned Judge who decided the case below are sound, has recently been decided in this Court. The notion, however, that they are meaningless, verbal formulas still permeates the argument of opposing counsel.

As was said by Mr. Justice Black in *Railroad Company vs. Canal Commissioners*, 21 Pa. St., 22, the Court "seems not to have made much impression upon the professional mind."

The rules of construction, as announced and applied by the Court below, were summarized by this Court in the case of *Blair vs. Chicago*, 201 U. S., 400. At page 471, of the opinion, the Court say:

"Legislative grants of this character should be in such unequivocal form of expression that the legislative mind may be distinctly impressed with their character and import, in order that the privileges may be intelligently granted or purposely withheld. It is matter of common knowledge that grants of this character are usually prepared by those interested in them, and submitted to the legislature with a view to obtain from such bodies the most liberal grant of privileges which they are willing to give. This is one among many reasons why they are to be strictly construed. Pierce on Railroads, 491; *New Orleans, etc. Railroad Co. vs. City of New Orleans,* 34 La. Ann., 429, 447. "Words of equivocal import," said Mr. Chief Justice Black, in *Pennsylvania Railroad Company vs. Canal Commissioners,* 21 Pa. St., 9, 22, "are so easily inserted by mistake or fraud that every consideration of justice and policy requires that they should be treated as nugatory when they do find their way into the enactments of the legislature." "The just presumption," says Cooley in his work on Constitutional Limitations, 7th ed., page 565, "in every such case is that the State has granted in express terms all that it designed to grant at all;" and, after quoting from the Supreme Court of Pennsylvania to the same effect, the learned author observes: "This is sound doctrine and should be vigilantly observed and enforced."

"Since the decision of the *Dartmouth College Case,* 4 Wheat., 518, this Court has had frequent occasion to apply and enforce the doctrine that a grant of rights in public property accepted by the beneficiary will amount to a contract entitled to protection against impairment by action of the State or municipalities acting under state authority. Concurrent with this principle and to be considered when construeing an alleged grant of this character is the equally well established rule, which requires such grants to be made in plain terms in order to convey private rights in respect to public prop-

erty, and to prevent future control of such privileges in the public interest. The rule was laid down with clearness by Chief Justice Taney in the often-cited case of *Charles River Bridge vs. Warren Bridge,* 11 Pet., 420, and has been uniformly applied in many subsequent cases in this Court. In *Perrine vs. Chesapeake and Delaware Canal Compnay,* 9 How., 172, 192, the same eminent Chief Justice, speaking for the Court, said: 'The rule of construction in cases of this description * * * is this—that any ambiguity in the terms of the grant must operate against the corporation and in favor of the public, and the corporation can claim nothing that is not clearly given by the law. We do not mean to say that the charter is to receive a strained or unusual construction, contrary to the obvious intention of the grant. It must be fairly examined and considered, and reasonably and justly expounded.' In the case of *The Binghamton Bridge,* 3 Wall., 51, 75, it was said: 'The principle is this, that all rights which are asserted against the State must be clearly defined, and not raised by inference or presumption; and if the charter is silent about a power, it does not exist. If, on a fair reading of the instrument, reasonable doubts arise as to the proper interpretation to be given to it, those doubts are to be solved in favor of the State; and where it is susceptible of two meanings, the one restricting and the other extending the powers of the corporation, that construction is to be adopted which works the least harm to the State.'

"This principle has been declared axiomatic as a doctrine of this Court. *Fertilizing Company vs. Hyde Park,* 97 U. S., 659, 666. In *Slidell vs. Grandjean,* 111 U. S., 412, 438, it is declared a wise doctrine, 'it serves to defeat any purpose concealed by the skillful use of terms, to accomplish something not apparent on the face of the act, and thus sanctions only open dealings with legislative bodies.' Among other cases affirming the principle in this Court is *Coosaw Mining Company vs. South*

Carolina, 144 U. S., 550, in which it was applied in adopting, of two doubtful constructions, the one more favorable to the State. Many of the cases are cited in a note to *Knoxville Water Company vs. Knoxville*, decided at this term. 200 U. S., 22, 34."

In *Knoxville Water Company vs. Knoxville*, 200 U. S., at page 34, of the opinion, this Court says:

"It is true that the cases to which we have referred involved in the main the construction of legislative enactments. But the principles they announce apply with full force to ordinances and contracts by municipal corporations in respect of matters that concern the public. The authorities are all agreed that a municipal corporation, when exerting its functions for the general good, is not to be shorn of its powers by mere implication. If by contract or otherwise it may, in particular circumstances, restrict the exercise of its public powers, the intention to do so must be manifested by words so clear as not to admit of two different or inconsistent meanings."

The foregoing decisions are so recent and cover the case so comprehensively that it would be a labor of supererrogation even to cite other authorities, much less to quote from them.

IV

THE INDETERMINATE FRANCHISE CLAIM.

This position was strongly insisted upon in the Court below. Not having seen the brief of opposing counsel, we do not know if, in view of the decision of *Blair vs. Chicago*, this claim is still relied on; but we submit that the present contention is disposed of adversely to the plaintiff in that case.

The theory as announced was that the franchise of The East Cleveland Railroad Company was derived from the State, including the right to construct and operate a

street railway in the streets of the city designated in its corporate charter; and that the function of the Council of the municipality consisted merely in designating the streets to be occupied and to regulate and fix the administrative and police features of the use. Therefore, the act of the Council of the City of Cleveland or of the Village of East Cleveland in attempting to fix a term for the duration of such use was in excess of the power conferred and in derogation of the franchise derived directly from the State; and was, consequently, null and void; and it was further said that this right of indeterminate duration obtained prior to 1878 was not extinguished by the acceptance thereafter of renewal franchises for the same streets, because there was no express surrender in the new contract of all pre-existing rights.

The opinion of the Court below renders unnecessary any extended discussion of this proposition.

The same argument was made in *Blair vs. Chicago.* The delegation by the Legislature of Illinois to the City of Chicago of control over its streets and of power to fix the terms and conditions for the use of those streets for street railway purposes was made in language very like that used by the Legislature of Ohio, and already quoted. The exclusive control of the streets was vested in the city; the street railway companies were obliged to obtain the consent of the city before using the streets.

In the opinion of the Court, at page 457, it is said:

> "A more comprehensive plan of securing the city in the control of the use of the streets for railway purposes could hardly be devised. The company must be 'authorized' by the city council before it can lay tracks or operate railways in the streets. This is more than to designate that for which authority has already been given. To authorize is to 'clothe with authority,' Webster's Dict.; 'To give legal power to,' Century Dict. It is an additional grant of right and power which the legislature re-

quires the corporation to obtain as a condition precedent to its use and occupation of the streets. This power of the city, in the absence of language in the statute, excluding the authority and reserving its exercise to the State, necessarily includes the right to fix the time for which the streets may be used. This doctrine was, we think, correctly stated by Judge Lurton, in delivering the opinion of the Court of Appeals in *Louisville Trust Company vs. Cincinnati*, 76 Fed. Rep., 296, 308. 'The right of the local authority to impose terms and conditions is clearly conferred, and no such corporation can impose itself upon the public streets or highways unless it enters into an agreement touching the occupancy of such streets, or resorts to the right of condemnation in default of an agreement. This right to impose terms and conditions most obviously implies the right to agree upon the duration of such occupancy. The right to exclude altogether, unless resort be had to condemnation, involves the right to limit the period of the grant.'"

The case of *Louisville Trust Company vs. Cincinnati*, 76 Fed. Rep., 296, cited with approval in the foregoing case, arose under the laws of Ohio which we are now considering; and is, we submit, conclusive of this case.

The case of *State ex rel. Taylor vs. Columbus Railway Company*, 24 O. C. C., 609, sustains the right of the city under its power to agree with the street railway company on the terms and conditions of the use, to fix a period for the duration of the use.

That the power to agree on terms and conditions for the use of the streets implies the right to agree to the duration of the use, and sustains the power of the municipality to impose as one of the terms, a right to acquire the property of the Grantee when the city shall have the power in the future so to do, is sustained by the decision of this Court made on October 29, 1906, in the litigation between the City of Indianapolis and the Gas Company.

As already indicated, Section "5" of the act passed in 1861 by the Legislature of Ohio conferred on the city in the broadest terms the right to agree with street railway companies on the terms and conditions for the use of the streets. This, we have seen, carries with it the right to fix the duration of such use. In one form or another this has been the law ever since, and with the exception of the first three resolutions passed respectively November 1, 1859, June 5, 1860, and July 3, 1860 (Record, pages 182, 183, 184), all the ordinances and resolutions conferring rights on The East Cleveland Railroad Company were passed after the adoption of this law. In point of fact, the City of Cleveland never at any time gave permission to use its streets for an indeterminate period.

The general ordinance passed September 20, 1859, provided, that any company organized for the purpose of operating a street railway in the city, should be governed by the conditions therein expressed. Among those conditions was one providing that no contract under the provisions of that ordinance should be made for a longer period than twenty years from the date of the passage of this ordinance. (Record, pages 250-252.) These provisions of the general ordinance have ever since been a part of the general street railway ordinances of the City of Cleveland.

The three ordinances last referred to, being those first passed conferring any rights on The East Cleveland Railroad Company, are expressly limited to a term of twenty years and are made subject to the provisions of this ordinance.

The only ordinance of the City of Cleveland which does not fix a specific date is that passed by the Council of the City of Cleveland on March 23, 1873. (Record, page 199.) Before its passage The East Cleveland Railroad Company had been granted permission to construct and operate its Garden street branch. This branch intersected with the main line or Euclid avenue line at the intersection of Brow-

nell and Prospect streets. It was expressly limited to a term of twenty years from and after the 20th day of March, 1868. This ordinance of March 23, 1873, merely permits the removal of the track from Brownell street and changes the route for the Garden street line so as to connect at Prospect and Erie. Manifestly it is controlled by the provisions of the original grant for the Garden street line, and in addition thereto Section 5 provides as follows:

> "The ordinances of the city now in force or that may hereafter be enacted for the government and regulation of street railways shall apply to this grant the same as to the other portions of said East Cleveland Railroad tracks."

It cannot, therefore, be maintained even as to this ordinance that the limitation was omitted.

That part of the Garden street or Central avenue line originally authorized by the Village of East Cleveland by ordinance of March 30, 1868, it is said, was for an indeterminate period. The ordinance itself (Record, page 189) does not limit its duration; but on the same date, at the same meeting, and evidently as a part of the same ordinance, there was adopted preambles and resolutions which limit the permission to operate to a period of twenty years from the completion of the street railway and required it to be completed within a period of five years from that date. It was also constructed as a part of the Garden street line and was obviously intended by the Council of East Cleveland to be controlled by the duration of the Garden street grant.

As to the Euclid avenue and main line, the resolution of the Trustees of East Cleveland Township, passed August 9, 1862 (Record, page 187), does not fix the duration of the grant. This is for a single track on the south side of the road between Willson avenue and Doan's Corners, afterwards known as Fairmount street. This section is the only part of the Euclid avenue line as to which it can be asserted the

permission was indeterminate.

But whatever may have been the contract relations between The East Cleveland Railroad Company and the City of Cleveland and the Village of East Cleveland under these ordinances and resolutions passed prior to 1878, those relations are now controlled by new contracts made afterwards and substituted in lieu of the former contracts. As already stated, before June 12, 1879, there was no specific statutory provision relating to the renewal of existing grants; and on that date an act was passed by which the municipalities were authorized to

> "renew any such grant at its expiration upon such conditions as may be considered conducive to the public interest."

This power to renew confers the right to make a new contract between the City and the Railway Company in the place of its pre-existing contracts. The mere exercise of the right carries with it the idea of substituting the renewal contract in all respects in the place of the former contract.

On September 8, 1879, The East Cleveland Railroad Company filed with the Council of the City of Cleveland its petition for a renewal of its "grant and license" in which it represents "that said original grant was for the period of twenty years as then fixed by law and by the provisions of a general ordinance passed September 20, 1859;" and prays: "That such grant of renewal and license may be made to said Company for the term of twenty-five years from and after September 20, 1879." (Record, pages 203 and 204.) A renewal grant, complete in itself, and dealing comprehensively with every phase of the subject of the right to maintain and operate a street railway, was then passed by the Council and accepted by the Company. (Record, page 204.) This renewal ordinance, however, covered only that part of the Euclid avenue line between Water street and Willson avenue. But later, on April 4, 1883, another ordinance was passed

authorizing the Company to lay and construct a double track east of Willson avenue. Previous to that time, there had been constructed only a single track over this part of the line. This ordinance conferred as to the line east of Willson avenue the right to continue its operation until the same date as that fixed for the territory west of Willson avenue, namely, until the 20th day of September, 1904. (Record, page 209.)

On July 13, 1888, another ordinance was passed authorizing the Company to equip with electric motive power its street railway on Euclid avenue east of Willson, and on Cedar avenue east of the Cleveland and Pittsburg crossing. And it was provided (Record, page 219) by Section 8, that when the Council should so require, the same motive power should be extended over the entire length of the main line and the Cedar avenue.

By resolution passed May 13, 1889, this extension of the motive power was required, and the Cedar avenue line throughout its entire length, and the main line from Willson avenue west, following Euclid avenue to Case, Case to Prospect, Prospect to Erie, Erie to Euclid avenue, Euclid avenue to the Public Square; thence around the south side of the Public Square, and through Superior street to Water street, were equipped by electricity.

It was provided by Section "6" as follows:

> "The privilege of constructing the electric system and the operation of its lines as hereinbefore provided is granted in consideration of the improved facilities hereby contemplated, and the large expenditure necessary to secure the same and shall be in force for a period of twenty-five years from and after the date of the passage of this ordinance upon its main and Cedar avenue lines."

It was further provided that,

> "If from any cause said Company shall fail to extend the said electrical system over their entire main and Cedar avenue lines within eighteen months

from the date of the passage of this ordinance, then said ordinance shall be null and void so far as it relates to extension of charter."

The grant for the Garden street line was renewed by the ordinance passed March 22, 1880. (Record, page 208.) This ordinance was accepted and the additional privileges and rights thereby conferred were enjoyed by the Company. The power of the Council to make this renewal eight years in advance of the expiration of the existing grant was litigated. It was contended that the statute conferring authority to make a renewal provided that such renewal should be made at the expiration of the existing grant, and that this forbade the making of such renewal grant in advance of the substantial expiration of the grant.

This litigation is reported in the case of *State ex rel. vs. The East Cleveland Railroad Company*, 6 C. C. 318, affirmed by the Supreme Court without report.

The view then announced by the Court was that it was competent upon a valuable consideration inuring to the public for the Council in advance of the expiration of a grant to accept a surrender thereof by the Grantee, and to make a renewal grant upon new and different terms; that the transaction in this case was the equivalent of a surrender by The East Cleveland Railroad Company of its grant for the Garden street line, and the acceptance of a renewal grant in lieu thereof; that the extension of track was a sufficient consideration for the surrender of the old grant and the making of a new one. If this be true, as against the public, it must be equally true as against the Street Railway Company.

It is clear, it seems to us, that a new contract for a valuable consideration has been made by the renewal grant of March 22, 1880, and that it is in complete substitution for all pre-existing grants. The renewal grant deals expressly with the same subject matter and contains a new and explicit provision with respect to the duration of the term. It

was competent for the street railway company for the added privileges and upon the new considerations to contract away any or all indeterminate rights it may have previously owned, and to accept in lieu thereof one for a fixed period. In view of the opinion of the Court in the case last cited, it cannot be denied that the extension of tracks was an adequate consideration to justify the surrender of previous rights.

In this respect the case is controlled by *Cleveland vs. The Cleveland Electric Railway Company,* 194 U. S., 538, in which it was held that the right to regulate fares reserved in the renewal franchise of 1879 was annulled by the ordinances of 1886, 1887, 1888 and 1889, in which in authorizing the extension of tracks and the equipment of the line by electricity, it was stipulated that the Company should charge and collect for passage over its lines in either direction but one fare and not more than five cents without any reservation of a future right to alter rates of fare, and with a stipulation that the rights conferred should continue during the life of the franchise.

V

THE CREATION OF A UNIFIED SYSTEM, ALL OF WHICH EXPIRES AT THE SAME TIME.

The position of plaintiff below is that all of the street railway lines in the city having been brought under one management and ownership with certain transfer rights over the lines as merged or consolidated, an entire system is thereby created and that the right to operate all or any part of it must and does expire at the same time.

The Cleveland Electric Railway Company was, from July 1st, 1903, and until the establishment of the lines of The Forest City Railway Company, the owner of ail the street railway lines in the city of Cleveland. From May, 1893, until the 1st of July, 1893, there were two street railway com-

panies owning and operating lines in the city of Cleveland, namely, the plaintiff and The Cleveland City Railway Company.

On the 1st of July, 1903, The Cleveland Electric Railway Company acquired, by purchase, as permitted by statute, all of the lines previously owned and operated by The Cleveland City Railway Company.

At the time of this purchase The Cleveland City Railway Company was the owner of the franchises originally granted to The Woodland Avenue Street Railway Company and The West Side Street Railway Company, which had, in February, 1885, been consolidated into one company.

The franchises of The Woodland Avenue and The West Side Street Railway Company were under review in this Court in the case of *The City of Cleveland vs. The Cleveland Electric Railway Company*, 201 U. S., 529, and were limited to expire upon the 10th of February, 1908. Originally the franchise owned previous to this consolidation by The Woodland Avenue Street Railroad Company, had been granted to expire the 22nd of September, 1904, but, in consequence of ordinances passed after the consolidation of the company, it was held in the case mentioned, that this franchise was intended to expire not earlier than February 10th, 1908, and at the same time that the franchises of The West Side Street Railway Company expired.

The Cleveland City Railway Company also owned and operated lines on St. Clair street, Superior street and Payne avenue, all of which were limited to expire on different dates in January, 1910. These had formerly been owned by The Cleveland City Cable Railway Company, and became the property of The Cleveland City Railway Company in consequence of the consolidation of The Cleveland City Cable Railway Company with The Woodland Avenue and West Side Street Railway Company. This consolidation took place in the early part of 1893.

Previous to the creation of The Cleveland Electric Railway Company, the franchises which it acquired thereby, had been owned by four separate companies: The East Cleveland Railroad Company, The South Side Street Railroad Company, The Brooklyn Street Railroad Company and The Broadway & Newburgh Street Railroad Company.

On March 25th, 1893, The East Cleveland Railroad Company and The Broadway & Newburgh Street Railroad Company were consolidated, creating The Cleveland Electric Railway Company.

On the 24th of April, 1893, The Brooklyn Street Railway Company and The South Side Street Railroad Company were consolidated with The Cleveland Electric Railway Company (Record, page 230).

The franchises owned by The Brooklyn Street Railroad Company, but for the consolidation, would expire on the 26th day of January, 1910; those of The South Side Street Railroad Company, in July, 1913; those of The Broadway & Newburgh Street Railroad Company, July 1st, 1914; those of The East Cleveland Railroad Company expire, as we contend, at different times. The Euclid Avenue or main line franchise, with its two extensions—the Cedar avenue and the Wade Park lines, expire July 13th, 1913, and its franchise for its Garden street line, March 22nd, 1905.

It is contended, we understand, that the effect of the consolidation and of the purchase above referred to, with such transfer privileges and rights for a continuous ride as are exacted by statute and provided for in the resolution of May 22nd, 1893 (Record, page 230), create an entire system of street railway franchises all expiring at one time.

It is further contended that after the consolidation, an intention has been manifested by the subsequent ordinances and resolutions of the Council, to recognize the date of the last expiring franchise, namely, July 1st, 1914, as the date

at which these franchises shall expire.

It is further contended that even if no such intention can be inferred from any action of the Council, nevertheless the obligations imposed to carry passengers for one fare over the entire system and to give certain transfer rights, creates a corresponding right to operate every part of the system until the date of the last expiring franchise.

It is manifest that if any of the franchises originally granted for a specific and definite period has been prolonged, the prolongation is not due to any *express* grant of the Council or of the legislature, but must be founded upon implication more or less violent.

Section 4 of the Act passed April 10th, 1861 (58 O. L., page 66), provided that "Whenever the lines of road of any street railway companies meet or intersect, and have been or may be constructed so as to admit the passage of cars over such roads continuously without break or interruption, they are hereby authorized to consolidate themselves into a single corporation in the same manner provided for the consolidation of railroad companies." This section, in one form or another, still remains in force, now being Section 2505-b (3443 — 16).

By the Act passed May 7, 1869 (66 O. L., page 140), providing for the extension of tracks, it is provided:

> "And when any such extension shall be made, the charge for carrying passengers on any street railroad so extended, and its connections made with any other road or roads by consolidation under existing laws, shall not be increased by reason of such extension or consolidation."

This section is still in force, now being, as amended, Section 2505 (1536 — 188).

The effect of these provisions in reference to consolidation, is the same as certain sections providing for the consolidation of steam railroads. Following the statutory

procedure, all the property of the constituent companies is transferred to the consolidated company and becomes subject to all of the restrictions and obligations of each of the constituent companies. Notwithstanding these provisions for consolidation and the frequent exercise of the right to consolidate, it has never before been intimated that, in consequence thereof, the franchise grants of the constituent companies were, in any way, amended or enlarged by reason thereof. It has been the practice in the past to apply for, and obtain, renewals to the company created by the consolidation, just as if the franchise remained in the hands of the constituent company to which it was originally granted.

The provisions for lease or purchase was inserted in the Statute at a later day, but prior to the consolidation of 1893 and also to the purchase of 1903. It is a plain provision for the purchase by one company, of all the property and franchises of another company. It further provides that

> "The fare charged for one continuous route or ride in the same general direction over all such lines or purchased lines within any municipal corporation, shall not exceed the maximum fare charged over any one of said lines prior to such lease or purchase."

None of these Statutes require the assent of the Council of the municipality to the consolidation or to the purchase of the road. The companies may consolidate, even against the objection or dissent of the municipality. Section 3443, it is true, provides that the Council shall have the power to fix the terms and conditions upon which such railways may be constructed, operated, extended and consolidated, but the right to consolidate exists and may be exercised independently of this power in the Council.

The plain effect of these provisions is simply to transfer the franchise owned by the constituent company, to the

consolidated company. A franchise contract is property just as real estate or power-houses. It may be likened to a leasehold interest or easement in the streets, created by agreement with the municipality which owns the street. By the effect of the consolidation or the act of purchase, that property interest is transferred without other conveyance, to a consolidated company. Manifestly, the consolidated company takes the property, that is, the franchise, subject to all its terms and conditions, just as it was originally created by agreement with the municipality.

This was the obvious object and purpose of these Statutes. Their language is designed to accomplish this purpose and none other. Any other effect, such as enlarging the period of duration of the franchises, or any of them, must follow from implication.

The consolidation and purchase are effected by the Legislature. The effect of the consolidation is to confer corporate existence on the consolidated company. In this respect, after the consolidation, the new company, as to its rights to corporate existence, stands on the same footing as if the charter had been under the general law. This, however, is a separate right from the franchise obtained from the city to maintain and operate a street railway in the streets of the city. To assert that it has some other effect, is to lose sight of the distinction between those franchises conferred by the State and obtained by organization under the State law, and those contractural franchises not granted by the State and not inherent in the corporation as such, but which come from the local authority having control of the public highways.

The question presented is substantially the same as that involved in the case of the *Louisville Trust Company vs. The City of Cincinnati,* 76 Fed. Rep., 296.

The Cincinnati Inclined-Plane Railway Company had been organized under the Steam Railroad Act of 1852. By

an amendment made in 1877, Inclined-Plane Railway Companies were authorized to hold, lease or purchase street railway companies. The exact language of the Act is:

> "Shall have power to hold, lease or purchase, and maintain and operate, such portion of any street railway leading to or connecting with the inclined-plane, as may be necessary for the convenient despatch of its business, upon the same terms and conditions upon which it holds, maintains and operates its inclined-plane."

Under this power, the Inclined-Plane Railway Company acquired several street railways connecting with its Inclined-Plane Railway, including the franchises owned by them.

It was contended that the effect of this Act, authorizing the purchase and operation of such street railway in connection with the Inclined-Plane, was to extend the franchise right acquired from the street railway company so as to make it continue during the life of the franchise right of the Inclined-Plane Railway Company.

In discussing this question, Judge Lurton said:

> "We do not mean to intimate that the municipal or local authority is the only source from which such an easement could come in Ohio. The legislative history of the State is such, however, as to indicate that the settled public policy of the State is not to confer said easements, but to refer all such companies to the municipality upon whose streets or highways they wish to exercise the franchises conferred by the State for the requisite street easements, upon terms and conditions to be agreed upon between such companies and the local government. When, therefore, we come to construe an Ohio Statute providing for the organization of either ordinary railway or street car companies, we may well do so with the expectation that this well-settled policy has not been departed from, and that the State has stopped with the grant of the usual and

necessary corporate franchises proper, by which it had been endowed with power to operate its road for tolls, when it shall have acquired from the local authorities the equally essential right of occupying with its tracks the particular streets upon which it proposes to conduct its business."

And further:

"The intention of this law was simply to vest Inclined-Plane Railway Companies with the corporate power to acquire and operate street railroad routes, leading to, or connected with, the Inclined-Plane; that, in the acquirement of such roads, such companies stood in the same position as other persons and other street railroad companies, and that when such routes are acquired by such companies, they are bound by all the provisions of the original grant by the city, and that none of the provisions of the same are abrogated by such acquirement."

And further:

"The legislature was not dealing at all with the subject of the term of duration of the street rights of such company, but was dealing with the question of the corporate capacity of a corporation organized under the Steam or Commercial Railway Act to maintain or operate an ordinary street railway."

The conclusion announced by Judge Lurton, was as follows:

"It follows that this company held the right to maintain and operate its Inclined-Plane Railroad just so long as it had the right to occupy the place upon which its tracks were located. As to a part of its railroad, its right to occupancy was unlimited, because it owned the fee in the property upon which its tracks were fixed. As to so much of its railroad as occupied Locust street, or any of the streets, over which its tracks had been constructed, its right to maintain or operate its railroad over or upon public streets depended upon the duration of its grant from the city."

The situation in that case and the one under consideration is quite analagous. The street railway which the Inclined-Plane Railway Company was authorized to acquire, was such as connected with its inclined-plane and as might be necessary for the convenient despatch of its business. It was authorized to hold the same upon the same terms on which it holds, maintains, and operates its inclined-plane. It was just as necessary and convenient to the company that all of its rights should expire at the same time, as it is in this case; but the Court, in an opinion most carefully considered, limited the meaning of the Statute to its obvious purpose, and did not hesitate to adopt as its conclusion, that the franchises acquired from the street railway companies were not abrogated or enlarged, and that they expired at different times. We submit, in principle, the case is controlling.

There may, or may not be, many advantages in the development of a system, all the parts of which shall expire at one time. That is a question of policy upon which this Court is not called to pass an opinion. There may, on the other hand, be just as many advantages in having the different routes or lines expire at different times. The problem of making new contracts for the operation of street railways may be less difficult if the Council has to do with a single line of a few miles at a time than if it is obliged to make new contracts and provide new street railway service on other terms over a large system; but, whatever may be the wisdom or unwisdom of one policy or the other, the Legislature has manifested no intent to deprive municipalities of their control over the streets, or to take from them the duty of agreeing on terms and conditions for the use of those streets for street railway purposes.

A contract made between the city and the street railway company for the use of the streets is as much entitled to protection against enlargement to the detriment of the city, as it is against impairment to the detriment of the street

railway company.

As was said by the learned Judge who delivered the opinion of the Court below,

> "Two observations conclusively answer the contention of the plaintiff; *first*, that if there is any control over the life of the system and of its parts, it is the life of the system which must control the life of the parts, not the part of the system. *Second*, it is far from the truth that physically or practically or legally, the one part of the system is essential to the operation and life of the system."

An inspection of the map (Record, page 258) will disclose the force of this observation. It is not conceivable that every one of the lines is essential to the operation of the system. It does not follow that the loss of any one line will destroy the system. It is not apparent that when companies holding different lines, were consolidated, an intention was evident either to the Legislature or to the Council, that all of the franchises previously granted, must be prolonged or abbreviated to some one date, at which all must thereafter expire.

Appreciating the force of these observations, the position is taken that the date of the last expiring franchise is the one that must be selected. But why the date of the last expiring franchise rather than of he first expiring franchise? It may be that the franchise, first expiring, is for nine-tenths or ninety-nine hundredths of the entire trackage, and the argument would require this large proportion to be controlled by the insignificant minority. Why, if the system must be unified at one date, should not the duration be averaged in some way? This would be fairer to the city which has, at least, equal rights with the street railway companies. More important than all, why should any change follow in the dates of expiration of the franchises? Manifestly, the consolidation, or the purchase under and by virtue of the Statutes, can have no effect upon the contractual rights or easements cre-

ated, not by the Legislature, but conferred by the city.

Nor is any purpose evident from any of the ordinances passed by the Council to treat the street railway as a system, and to fix a uniform date of expiration. As already stated, the street railway company made the consolidation of its own initiative. In its communication to the Council, of May 22nd, 1893 (Record, page 230), it says:

> "These consolidations were made under the advice of counsel and believed to be legal and valid in all respects."

It is further said, that since some doubt has arisen as to the intention of the company, the company desires to state officially that it does not claim any rights greater than were owned by the constituent companies that formed the organization; that it has, since the consolidation, issued transfer checks to all persons desiring them, to enable such persons to have a continuous ride from any of the East Side lines to any South or West Side line, and for one fare, and will continue such system of transfers where it cannot better accommodate its patrons by such other lines as it may establish; that it disclaims all intention of charging more than one fare for any such continuous ride.

Here is an express disclaimer of any belief on the part of the company that it acquired any greater rights than were owned by the constituent companies. Its statement to the Council is not a request for any additional rights, but a proclamation of its intention and an explanation of the legal effect of its acts.

It is a disclaimer of an intention to charge more than one fare for a continuous ride over the lines as consolidated, and its announcement that it was giving transfer checks, and would continue to do so, except where it could better accommodate its patrons by a through line, is a statement only of the legal duty imposed by the Statute in all cases where a consolidation is effected.

The Act of 1867, already quoted, attaches such a consequence to any extension of tracks or to any consolidation of street railroad companies.

Having concealed from the Council any other intention, having interpreted its own acts in this explicit way, it cannot be said that the resolution of the Council passed immediately thereafter and in consequence of this communication, can confer any additional rights. To sanction such a construction would be a fraud on the representatives of the people. In effect, it is only an assent to consolidation on the terms prescribed by Statute, and not the fixing of new terms and conditions, whereby the consolidated company is to be governed. The transfer check is not the creation of a new right, but merely a device to enable the company to discharge its statutory duty. As a consequence of the consolidation, it is required to carry passengers for one fare for a continuous ride in the same general direction, and the inconvenience of operating through lines of cars made necessary this device. It did not create a right, but was an incident in the performance of a duty.

Much has been said about the added benefits conferred upon the public by giving this continuous ride and issuing these transfers. It must be remembered that the burden is one voluntarily assumed by the company; it is made a condition of any consolidation. If the burden thus imposed was greater than the other benefits the company expected to obtain, it manifestly would not have consolidated.

Nothing, therefore, can be implied from this fact, to change the rule of construction which is always applied to acts of the Legislature or of municipalities conferring franchise rights. These rights, although conferred upon public grounds, are, nevertheless, of great value to those seeking them, and are sought with avidity. Every consideration that requires an original grant in derogation of public rights, should be strictly construed, that forbids anything to pass by im-

plication, that requires plain and explicit English words to create the right asserted, applies with full force to every Statute or ordinance authorizing or assenting to a consolidation of street railway lines or the extension of the tracks of existing lines.

The Council of the City of Cleveland, since the consolidation of 1893, has not manifested, by ordinance, any intent to fix a uniform date of expiration. It has not selected July 1st, 1914, the latest date of expiration for any franchise then existing as the date upon which shall expire all franchise rights subsequently granted. The intent of the Council, so far as it has been manifested, is to preserve the separate dates of expiration for the separate lines.

On August 5th, 1901, the Council passed an ordinance granting the right to The Cleveland Electric Railway Company to extend and operate a single track in the Public Square, which was limited to expire March 22nd, 1905, the date fixed for the expiration of the franchise of the Garden Street line.

On June 23rd, 1902, it passed another ordinance authorizing The Cleveland Electric Railway Company to extend and operate a double track in certain parts of Erie street, which is also limited to expire on the 22nd of March, 1905 (Record, page 243). About the same dates six other similar ordinances were passed granting to The Cleveland Electric Railway Company or to The Cleveland City Railway Company the right to extend their respective tracks, which are also limited to expire on the 22nd of March, 1905 (See Supplemental Record).

The several ordinances to which we shall refer more particularly in that part of our argument treating of the date fixed for the expiration of the Garden Street line, which were passed after March 22nd, 1890, manifest no intent on the part of the Council to make the same expire on July 1, 1914, or on any date other than March 22nd, 1905, the date fixed

for the expiration of the Garden Street line.

In considering the effect of the consolidation, it is necessary to view the ordinances from the position of the Council, at the time they were severally passed. The intent to create a unified system, it cannot be said, was then evident to the Council. The thought that any such intent ever existed arises from a process of reasoning backward after the ownership of the lines has been brought within the control of a single company.

It is founded upon inference, implication, and speculation, incomprehensible to the lay mind, and scarcely to be discovered by a lawyer without his attention being especially directed to it. We submit that there is no foundation for the assertion that a unified system has been created with a uniform date of expiration for all its franchises and that such date is that of the longest continuing franchise.

VI

THE WILLSON AVENUE EXTENSION OF FEBRUARY 19TH, 1894.

It is asserted that this ordinance, by requiring the companies to whom was granted the privileges thereby conferred, to transfer passengers to and from Willson avenue on all intersecting lines without an additional charge, and to transfer from the second line to a car which crosses the Cuyahoga River, imposed an obligation upon the companies, which can only be performed according to its obvious purpose, by permitting the companies to continue to operate all intersecting lines until July 1st, 1914, the date of expiration fixed in the Willson Avenue ordinance.

The title of this ordinance is one granting permission to The Cleveland Electric Railway Company and The Cleveland City Railway Company to extend their tracks in Willson avenue. Obviously, therefore, the object to be ac-

complished by the ordinance was simply to permit the extension of tracks as provided by Statute. At that time The Cleveland Electric Railway Company had tracks in Willson avenue between Scovill avenue and Broadway. (See Map; Record, page 230.) The franchise for these tracks expired January 22nd, 1910. (See Supplemental Record.) It also had tracks in Willson avenue, between Hough and Perkins, which were a part of the Wade Park extension of The East Cleveland Railroad Company, and expired July 13, 1913 (Record, page 269). The Cleveland City Railway Company had tracks in Willson avenue, between Payne and Lexington, the franchise for which expired in 1910. The two companies were authorized jointly to construct extensions in Willson avenue necessary to close these gaps, and continuing the construction northwardly to the terminus of the street.

Except for Section 6 containing the transfer privileges already referred to, it could not be contended that these ordinances had any effect different from that of any other ordinance authorizing an extension of tracks.

The language of Section 1 shows that the new tracks were to connect with the existing track on Willson avenue, and were to be operated in connection with the existing tracks in Willson avenue. Nothing is said with reference to their being operated in connection with a system of street railways or with any other track than those already in Willson avenue.

No language is used from which it can be inferred that the Council were intending to affect the provisions of the franchises outside of Willson avenue. Neither directly nor indirectly can it be said that it was intended to renew the grants for lines on other streets, or to prolong the franchises for those lines; any argument to the contrary is the merest inference and conjecture.

The companies applying for and accepting this right

to extend tracks, did so subject to the provisions of Section 2505. This provision gives the passenger the right, upon the payment of one fare to be carried not only over the extension, but over the rest of the line, of which the extensions become a part. This is true, aside from the provisions of Section 6.

The relation, however, geographically, of the tracks on Willson avenue to the tracks of which they are an extension, is such as to make it impossible, from an operating point of view, to perform this statutory duty without requiring passengers to change cars. If passengers are to change cars in order to have the continuous ride which the Statute imposes as a condition of the extension, then some system must be adopted for an identification of the passengers leaving one car and applying for passage on another. The device adopted was that of issuing what is called a transfer check. If not simpler, it is surely more economical than having stations and gatemen to superintend the changing of passengers from one car to another.

The provisions, therefore, of Section 6, with reference to franchises, is merely an economical device of the street railway company to enable it to discharge its statutory duty. It could not obtain the right to extend its tracks in Willson avenue on any other terms. The fact that the tracks were constructed as an extension, gives the right to a continuous ride. If the company wished to escape this duty, it could have done so only by competing as to the rate of fare, with other persons or companies for the right to construct and operate a street railway on Willson avenue. To escape this salutary public safeguard and to acquire the right to construct its tracks without competition, it was necessary to assume the duty of giving passengers a continuous ride, and this, as we have seen, could not be done without some system of identifying passengers transferred from one car to another.

The language of Section 6 admits of no other construction. It does not follow that the Council had in mind the exaction of the transfer privilege to any other line of either company, except so long as such company had that other line. It does not follow that the right to be transferred from such second line to a car on any other line of the company operating the same, which crosses the Cuyahoga River, after such company ceased to have any other line, was in their mind. It is only from any line of either of said companies, intersecting or going to Willson avenue, that the companies operating cars on Willson avenue are obliged to receive passengers without an additional fare.

It is manifest that this provision for the exchange of transfers is fully performed according to the intent of the Council, by giving and receiving transfers so long only as either of such companies have other lines in a position to perform the duty.

It will be borne in mind that the extension of tracks on Willson avenue is not an extension of the tracks of the Garden Street or the Central Avenue line. The tracks on Willson avenue merely cross the tracks on Garden street. It is true the duty of transferring the passengers applied to the Garden Street line because it intersected Willson avenue; but it, by no means, follows that the Council intended an effect not apparent on the face of the ordinance and difficult to be understood even by a lawyer.

Counsel invoke in favor of their contention the rule applied between private persons, which holds that whatever is reasonably necessary to the enjoyment of the thing granted shall pass by implication. If the streets of Cleveland were the property of a private owner, no such consequences, we submit, as are contended for, would follow. It is foreign to all the purposes of the ordinance itself. It is not reasonably necessary to the enjoyment of the right to operate the tracks on Willson avenue. But this rule has no application to

grants made by sovereign powers dealing with the rights of the people. Implications from what is necessary or convenient cannot arise. It is only what is given in express, unambiguous language, or which flows from an implication as clear and cogent as if set down in apt words, that passes to the grantee.

The distance covered by this extension of tracks on Willson avenue does not appear from the record. The comparative distance in relation to all the lines then owned, will appear from examining the two maps at pages 230 and 258 of the Record. About one-half the distance on Willson avenue is p[illegible] for in this ordinance, and this is, perhaps, one-fifti[illegible] of the entire trackage.

Now it is asserted that the Council, by the use of indefinite language, not evidencing a clear intention, dealing with the triviality of a short extension of track, has renewed to the same date the franchises for all the rest of the system, perhaps fifty or a hundred times as great in length.

If this be true, then, as was said by the learned Judge who delivered the opinion of the Court below, the Council may give away the property of the people in their streets without knowing it and while striving not to do so.

In this connection, notice may be taken of an argument much relied upon which applies not only to this position, but to all the positions of the plaintiff. It is said that an extension of tracks under the provisions of the statute must be operated in connection with and as a part of the line as extended; in other words, the extension of tracks and the original line thus extended become merged in one; that they can be operated in no other way than together as an entirety; and, that, therefore, by necessary implication whether the ordinance says the extension of tracks is to be operated in connection with the existing line or not, it must, of necessity, be so operated, and that when a new date is fixed for

the expiration of the track extension, this prolongs the date of expiration of the original line.

This argument ignores the distinction pointed out by Judge Lurton in *Louisville Trust Company vs. Cincinnati*, 76 Fed. Rep., 296. The Legislature in Ohio has never attempted to confer franchises to use the streets. It infringes on the settled law and policy of Ohio, which is to refer all persons desiring such franchises to the municipal authorities and which empowers the latter to fix the terms and conditions for such use. The Legislature has empowered the municipalities, it is true, to authorize street railway companies to extend their existing tracks, thus rendering unnecessary compliance with other restrictions enacted to safeguard the public interest, such as public advertisement and competition as to the rate of fare; but as a condition of such track extension the right to ride for one fare over the track as extended is imposed. It cannot be inferred from this last requirement that the Legislature intended to restrict the powers of municipalities in making contracts for the use of its streets, or that it intended to overthrow any rules by which the acts of the municipalities must be construed.

The fact that the municipality in authorizing the extension may say it is to be operated in connection with the existing tracks to which the extension is annexed adds nothing to the force of the statute. To say in addition that the right to operate the extension shall continue to a date beyond that of the original line without using plain, express language to evidence an intention to prolong the life of the original line, cannot, in view of those rules, operate to prolong the right to operate the original line. The doctrine of strict construction, when a grant in derogation of the public right is to be construed, forbids such an inference. The language of the track extension ordinance will be construed as if it said, nothing herein contained shall affect or enlarge any other contracts between the City and the Railroad Company.

The logic of the argument requires that a track extension under these circumstances for a few hundred feet with a provision that the right thus conferred shall continue to a date beyond the franchises for the existing lines shall operate as prolonging the life of two hundred and thirty-six miles of street railway. This contention is made with respect to the Willson avenue ordinance for trackage from fifty to one hundred times as great as the extension authorized on Willson avenue.

This latent concealed purpose and effect is not disclosed on the face of the Willson avenue extension ordinance or of any other ordinance authorizing extensions of track or the construction of an additional track. It is found concealed in the mazes of ordinances of relatively small consequence, and is enforced by a process of reasoning which the lay mind has difficulty in comprehending, and which it could hardly discern at all unless pointed out. Commenting on this argument, the learned Judge of the Court below in denying it force used language which cannot be improved upon. He says (Record, pages, 79, 80):

> "And this is true, not only for the reasons already asserted, but because of the nature of the situation which exists when such legislation is under consideration. The municipal legislative body does not always consider the possible legal deductions which may be made from its language, and it could not do so; when the matter is susceptible of such easy expression in the English language, it might well be supposed that if, by an ordinance, it was intended to fix a period for a franchise, it could be done in unmistakable terms. There is no need of concealment in such cases, and no need for implication.
>
> "If it be true that to grant the right to build an extension and permit its operation as such in connection with the system of which it forms a part, for a period beyond the duration of the sys-

tem's franchise, is to extend to that date the franchise of the system, then we must conclude that the Council may give away the public's property and the rights of the community, without knowing that it is doing so, and while striving not to do so. It is most ingeniously and plausibly argued that, to give the right to operate, in connection with the main stem, the extension of an existing line, to a time beyond the time allotted to the existing main stem, is, by implication, to extend the period of right to operate the main stem, because, if it were otherwise, it would lead to an absurdity, and leave the fragmental extension alone and incapable of operation when the franchise of the main stem expired.

"Yet, apart from the fundamental objection which I shall hereafter discuss, a little reflection suggests many answers to the claim. The extension may or may not be incapable of independent operation. Is the determination of the right to depend upon the particular conditions of independence, or of isolation, in each case? The price is too high, and the implication too severe and far-reaching, if, as claimed by counsel, a slight prolongation of a line, made under the statute allowing extensions, shall suffice to extend the franchise of two hundred and thirty-six miles of line if, perchance, a careless, or generous, or complacent Council, dealing with the triviality of a few hundred feet of extension, should give the right to operate it, in connection with the main line, for a period beyond the date of expiration of the main line's franchise. Certainly, no obligation is incurred to so operate in connection with the main line after the company's franchise to the main line has expired.

"No doubt the vigilant representatives of the railway company will always endeavor to procure the longest possible term for the most trivial extension. The Council may think the right of such slight importance as to grant it without thought

> of any additional and important rights arising by implication. When the right is possessed, if it can be possessed, and the corporation is in possession even of only a few hundred yards under such a franchise, it has a position of some importance, and sometimes of controlling importance."

To sanction the argument does violence to the rules of construction announced in *Blair v. Chicago*. The words from which this result is inferred, are equivocal and ambiguous. They do not grant in express terms all that is claimed for them. They do not make a grant of the right claimed in plain terms. They conceal by a skillful use of words the purpose which it is now said was intended to be accomplished. They do not set down in plain, unmistakable English words, the intention which it is now asserted was embodied therein. It is manifest that had what is now claimed for this track extension ordinance been set down in plain words and asked for directly from the Council, it could not have been had. And to permit such privileges to be cloaked and covered up under ambiguous and equivocal expressions not distinctly presenting the subject of their extent and propriety to the councilmanic mind, exposes the Council to deception and enables the parties by this artful duplicity of language to claim and enjoy privilges which the Council most assuredly would not have conferred had they been directly and clearly asked. (*New Orleans, etc., Railway v. New Orleans*, 34 La. Ann., 477.) Instead of permitting only those rights to pass which are conferred in express language, the construction asked for passes rights which were denied in express language.

We submit that nothing can be claimed by virtue of the Willson Avenue extension ordinance or any other track extension ordinance as a prolongation of the life of other lines.

VII.

THE TRUE EXPIRATION DATE OF THE GARDEN STREET OR CENTRAL AVENUE LINE.

The contention is that the Garden Street or Central Avenue line is an extension of the Euclid Avenue or main line of The East Cleveland Railroad Company; that it was and is operated as an extension in connection with the said main line, and by force of the statute as well as the obvious intent of the Council, expires at the same date as the line from which it is extended. Also that the ordinances of the City of Cleveland authorizing The East Cleveland Railroad Company to lay certain track extensions and additional tracks manifest an unambiguous and express intent to make the Garden Street line a part of the Euclid Avenue or main line, and its franchise to expire at the same date, which, as we have seen is July 13, 1913.

Our contention is that the Garden Street line was established and the street railway thereon constructed as an original street railway route, and not as an extension of existing tracks; that it was so created with all the formalities such as public advertisement and competition as to the rate of fare of an original grant or route; that its separate identity and independence has ever since been recognized and preserved by the City of Cleveland in dealing with it, especially in renewing it and authorizing it to be equipped with electricity; and that no intent is manifested in the ordinances authorizing track extensions or the laying of additional track, to destroy the separate identity of the line, to convert it from an independent street railway route into an extension only and a part of the Euclid Avenue or main line of The East Cleveland Railroad Company, or to prolong the date of expiration from the 22nd day of March, 1905, the date explicitly agreed on in the renewal ordinance, to the 13th day of July, 1913, the date fixed for the expiration of the Euclid

Avenue or main line of The East Cleveland Railroad Company.

As was said by the learned Judge of the court below:

> "An examination and comparison of the several ordinances relating to this subject leaves upon the mind the indelible conclusion that after the ordinance of March 22, 1880, all of the extensions of the Garden Street line were intended to expire with the Garden Street main line franchise, viz., March 22, 1905";

that it was

> "the purpose of the Council all the time to make the life of the right to operate the Garden Street line all the same throughout its length and over all the extensions and additional tracks."

An examination of the ordinances and of the statute law dispel any doubt as to the original character of the Garden Street line. It was created by the Council, granted to The East Cleveland Railroad Company, and constructed and equipped by that Company, as an original, separate and independent line, and not as an extension of the Euclid Avenue or main line.

The ordinance making this grant was passed January 14, 1868 (Record, page 188). The grants previously made to The East Cleveland Railroad Company had conferred on it the right to construct and operate a street railway commencing on Superior Street at Water Street; thence through Superior Street to the Public or Monumental Square; thence through the Square and Superior Street to Erie Street; thence through Erie Street to Prospect Street; thence through Prospect Street to Case Avenue; thence through Case Avenue to Euclid Avenue; thence through Euclid Avenue to Willson Avenue, the limits of the city; and by permission from the Trustees of the East Cleveland Township beyond Willson Avenue on Euclid Road or Avenue to Doan's Corners, afterwards Fairmount Street. Subsequently this route was changed

so as to pass from Erie Street to the Public Square by way of Euclid Avenue. The ordinances of the City of Cleveland had fixed a period for the duration of these grants as twenty years from the 20th day of September, 1859.

The ordinances created a single street railway line, frequently thereafter referred to as the main line of The East Cleveland Railroad Company, expiring at a date certain. The streets covered by this line were also expressed with obsolute clearness.

In this situation on January 14, 1868, the grant was made to The East Cleveland Railroad Company for permission to construct a street railway

> "from the intersection of Prospect and Brownell streets to connect with the main line of its railroad; thence along the center of said Brownell street to its intersection with Garden street; thence easterly along the center of Garden street to and across Willson avenue to the easterly boundary of said city."

The resolution adopted by the Council recites an application previously made for leave to construct a street railroad over these streets; that the Company had filed the consent in writing of a majority of the property owners abutting on said streets; that said Company had filed with the Council a bond in the penal sum of $20,000.00 to construct said railroad within twelve months from the date of the grant, and leave given by the Council; that the requisite notice for bids had been given as contemplated by the statute, and that the bid filed in pursuance thereof is the lowest rates of fare for carrying passengers made by any company or individual. In consequence, following these recitals, the consent of the Council is given to The East Cleveland Railroad Company to construct its street railway upon said streets and avenues, and to use and occupy the same with its track, switches and turn-outs for and during a period of twenty years from the date of the making of the grant, subject to the provisions of an ordinance of the City passed on De-

cember 4, 1866. It is further provided that The East Cleveland Railroad Company might continue to use and occupy the streets over which its main line was operated westerly from the junction of said road with the main line to its westerly terminus.

The acceptance shows the interpretation put on this grant at the time it was made. The Company, by virtue of a resolution of their stockholders

> "hereby accept the grants and permits to construct and operate a railroad from their main track in Prospect street, through Brownell to Garden, and through Garden to the easterly line of the city."

There was no law then or at any time in Ohio which forbids an individual, company or corporation owning and operating a street railroad from becoming a bidder on any other street railway route on which the municipality may be inviting proposals to construct and operate a street railroad. Such company may bid for as many street railway routes as the Council sees fit to create, and if it agrees in its bid to carry passengers at a rate of fare lower than any other bidder, then the municipality is obliged, if it makes any grant, to make it to that bidder. Nothing in the law places the grant thus obtained on any different footing, or requires the application of any different rules of construction than would apply if the route thus acquired was the first or only one acquired by the bidder.

The Council in providing street railway transportation on Brownell and Garden streets, saw fit to adopt this method. In fact, at that time no statute was in existence authorizing the Council to grant leave and permission to extend the tracks of existing routes. In any event in order to make sure that the people had secured the person that would agree to carry passengers for the lowest rate of fare, the municipality in this instance established Brownell and Garden streets as a street railway route, invited proposals to carry passengers thereon at the

lowest rates of fare, accepted the proposal of the lowest bidder, and made the grant. Possibly the geographical relation of Brownell and Garden Streets to the line already owned and operated by The East Cleveland Railroad Company and to the rest of the city placed other bidders at a disadvantage; but be that as it may, The East Cleveland Railroad Company was the lowest bidder for this route, and obtained the grant. Notwitstanding the subsequent change of the law which permits tracks to be extended in any direction or for any distance, the municipality may, and no doubt has many times since exercised its option to provide street railway facilities through the procedure and competitive method of making an original grant, and when it does so, the grant when made is a separate and independent line. Because one of its termini connect with another line, it does not follow that it is merged in the line with which it connects, any more than the latter is thereby merged in the former.

The East Cleveland Railroad Company obtained another manifest advantage by the grant thus made. Its existing line expired on the 20th of September, 1879, whereas this grant was made to expire on the 14th of January, 1888.

The resolution of March 25, 1873 (Record, page 199), enforces this same view of a separate and distinct identity. The recital of the resolution is:

> "The East Cleveland Railroad Company desire and propose to connect their Garden Street branch with the main line of their road at the intersection of Erie and Prospect streets by laying double tracks from this point through Erie to Ohio street, and through Ohio street to Garden street, and to remove their track from Brownell street between Ohio street and Prospect street,"

and permission was accordingly granted.

Ever since 1868 all of the resolutions and ordinances of the Council in the title and in the body thereof refer to the street railway over this territory as the Garden Street branch

of The East Cleveland Railroad Company, or the Garden Street line, or the Garden Street main line. Never is it referred to as the Garden Street extension of The East Cleveland Railroad Company's main line or Euclid Avenue line.

The grant last mentioned fixes the western termini of the Garden Street line as the intersection of Erie and Prospect Street. From that point to the easterly end of the line on Garden Stret, now Central Avenue, and on Quincy Street, the legislation of the municipality has always applied separately from that applying to any other part of the line of The East Cleveland Railroad Company.

The original contracts of The East Cleveland Railroad Company for its several lines continued in force until new contracts were substituted by way of renewal in the year 1879 and 1880. The Council, notwithstanding both lines were then owned by the same Company, and notwithstanding the law had been changed so as to permit extension of tracks, treated the Garden Street line as a separate and distinct entity in making these renewal contracts. The renewal grant of September 15, 1879 (Record, page 204, 207), in entitled,

> "An ordinance granting a renewal of franchise to The East Cleveland Railroad Company to construct, maintain and operate its street railroad in and through certain streets of the City of Cleveland."

The ordinance in Section I describes the streets specifically as follows:

> "Commencing on Superior street at the intersection of Water street; thence through Superior street to and around the southwest corner of Monumental Square to Euclid avenue; thence through said avenue to Erie street; thence through said Erie street to Prospect street; thence through said Prospect street to Case avenue; thence through said Case avenue to Euclid avenue; thence through and along Euclid avenue to Willson avenue."

No part of the territory covered by the Garden Street line, it will be seen, is included in the specific description of the streets to which the right of renewal applied. The words exclude the idea that either the City or the Railroad Company had at that time any belief that the Garden Street line was other than a separate and independent line and to be dealt with as such.

The streets east of Willson Avenue are also excluded, showing that the Council then saw no difficulty in legislating for a part of one line even though certain other parts of it were operated in connection with it, or as a part of the same system. This is further manifest from the provisions of Section 14. That section provides, in substance, that the Council shall have the same power to regulate fares on the road east of Willson avenue, and to regulate the operation of that part of the road just as it might the portion west,

> "leaving the contract made between said Company and the Village of East Cleveland unaffected in all other respects."

Later, on April 4, 1883 (Record, page 29), by a separate ordinance, the Council granted The East Cleveland Railroad Company the right to extend, lay, and operate its double track on Euclid Avenue east of Willson Avenue, and provided that the right of said Company to have and operate its said railroad on said Euclid Avenue between the west line of Willson Avenue and the city limits shall terminate on the 20th day of September, A. D. 1904, with the said renewal of that part of said Company's line lying west of said Willson Avenue.

This, also, is specific in the streets covered by it, and does not include any part of the Garden Street main line.

It is impossible to imagine that these two ordinances alone could have operated as a renewal of the franchise for the Garden street line. Yet the basis for asserting that the franchise for the Garden street line is now controlled by the

ordinances prolonging the franchise of The East Cleveland Railroad Company to July 13, 1913, is very little more substantial.

The franchise of The East Cleveland Railroad Company for the line on Garden Street was renewed by a separate ordinance. (Record, page 208.) In view of the title to this ordinance, and the object to be accomplished by it, and also in view of the language permitting renewals only at the expiration of any existing grant, it is not surprising that the force and effect of this ordinance was afterwards challenged in the courts. The opinion of the Court (6 C. C., 318) discloses that the only questions discussed and considered were whether consents of property owners were required in the case of renewal grants, or whether the Council had power under the statute to make a renewal in advance of the substantial expiration of the existing grant. As already stated, the power to make the renewal was sustained on the theory that the existing grant was thereby surrendered and a new contract substituted in its place.

Yet, aside from the title and general scope of the ordinance, the language is express in that it confers the right

> "to equip and operate said extension and *its Garden street branch* for the period of twenty-five years from and after the passage of this ordinance."

It is also made subject to all the general ordinances of the City now in force; and they provide amply for all of the details of construction, operation and regulation, and rate of fare, such as is contained in the renewal grant for the Euclid Avenue line. Let the express and definite character of the right conferred to operate not simply said extension to a date beyond the expiration of the main grant, but also to operate the lines covered by the main grant to the same date as fixed in the extension ordinance, be constantly borne in mind when it is insisted, as it will be, that other track extensions conferring the right merely to operate the extension to a given date,

are to be taken as carrying with it by implication as necessary and as cogent as if expressly set down in apt English words, the franchises for all the other lines in any way reached from this extension. This clear and definite language used to accomplish a specific purpose, and appropriate to that end, could and no doubt would have been adopted had the Council intended to accomplish the same result as it did by the ordinance now under review.

Not only was the Euclid Avenue or main line of The East Cleveland Railroad Company treated as a separate and independent entity from that of the franchise for the Garden Street line in making these several renewal grants, but the two franchises were considered and treated as separate and distinct entities in granting the leave and permission to equip them by electricity.

The ordinance passed July 13, 1888, was entitled:

> "An ordinance granting The East Cleveland Railway Company the right to construct and operate an electric street railway on Euclid and Cedar avenues."

The Cedar Avenue line had been constructed in 1882 as a track extension of the Euclid Avenue or main line, and was expressly made to terminate with the grant for the main line. The ordinance authorizing the electric equipment specified the lines to be equipped as follows:

> "Euclid avenue from Willson avenue easterly to the city limits; Cedar avenue from a point near The Cleveland & Pittsburg Railroad Company's right of way in said avenue easterly to a point about 1500 feet east of Fairmount street."

Section 8 provided, in substance, that whenever the Council should require, the same power as therein provided should be used on the entire length of the main and Cedar Avenue lines.

Section 6, in part, provided, that if the Company should fail to extend said electrical system over the entire

main and Cedar Avenue lines within eighteen months from that date, the ordinance should be null and void, so far as it attempted to prolong the period of operation. This section also recited that the privilege of constructing the electric system and the operation of the lines as therein provided was granted in consideration of the improved facilities thereby contemplated, and the large expenditure necessary to secure the same, and should be in force for a period of twenty-five years from and after the date of the passage of the ordinance upon its main and Cedar Avenue lines.

Within eighteen months thereafter the Council required by resolution the equipment with electricity of the main and Cedar Avenue lines to the westerly termini thereof, subject to the requirements of said ordinance. If this resolution had not been complied with within eighteen months from July 13, 1888, the renewal would have become null and void, and the franchise on this line would have expired on September 20, 1904. The electrical equipment was, however, installed as stated in the bill (Record, page 119),

> "From Willson avenue through Euclid avenue to Case avenue; through Case avenue to Prospect street; through Prospect street to Erie street; through Erie street to Euclid avenue; through Euclid avenue to and along the Public Square to Superior street, and through Superior street to Water street; and also such portion of its Cedar avenue extension as had not theretofore been equipped with electricity."

On March 10, 1890, an ordinance was passed entitled:

> "An ordinance granting The East Cleveland Railroad Company the right to substitute electric motive power for horse power upon its Garden street branch."

Section I granted to the Company

"the right to operate its Garden Street branch by electricity, *i. e.*, from the intersection of Prospect and Erie streets, along Erie street to Ohio

> street; along Ohio street to Brownell street; along Brownell street to Garden street; and along Garden street to Lincoln avenue; also along New street from Garden street to Quincy street, and along Quincy street to Woodland Hills avenue."

This section further says:

> "Authority is hereby granted said Company to erect and maintain on said streets all necessary poles and wires, and the necessary appliances and fixtures for the conducting of electricity to operate by electric power the said Garden street branch *during the term of its present grant for said Garden street branch.*"

This last ordinance was accepted on April 4, 1890, and in its acceptance the Company

> "agree to abide by the provisions, conditions, limitations and restrictions contained in said ordinance."

Thus it will be seen from these ordinances that the franchise for the Euclid avenue line or the so-called main line of The East Cleveland Railroad Company and its track extension on Cedar avenue were treated as separate and independent of the franchise for the Garden Street branch or line. The parties so understood the status of the respective lines. A simple resolution requiring the Company to equip its main line to the westerly terminus thereof is construed by the Company to require the equipment only of the Euclid Avenue line. This construction was accepted and acquiesced in by the City. The provision in the ordinance of July 13, 1888, requiring the electric equipment of the entire main and Cedar Avenue lines within eighteen months under the penalty of rendering null and void the added term thereby conferred is contemporaneously construed not to include any part of the Garden Street line. The Garden Street line itself is made the subject of an independent act of legislation in the matter of electrical equipment.

These same ordinances fix and preserve a separate and independent date of expiration. The renewal franchise for the Euclid Avenue line was limited to expire in definite and express language on the 20th of September, 1904. The Cedar Avenue extension, by reason of the fact that it was an extension, as well as by express and definite provision, expired at the same date. As a consideration for providing at a large expense electrical equipment an added term of some nine years was conferred on the Company as to its franchises for those lines. The question of the length of time for which the road should be operated under these conditions and with this new motive power was definitely and clearly presented to the legislative mind, and was settled with equal definiteness and clearness.

The ordinance authorizing the equipment by electricity of the Garden Street line was passed within three days of eighteen months thereafter. It was accepted by the same officers of the Street Railway Company that had accepted the former ordinance and many others. The parties by language equally definite and express fix a separate and independent date for the expiration of the franchise for the Garden Street line. In other words, the right of operation with the new motive power is expressly made to terminate not with the grant for the main line, but with the present grant for the Garden Street line. This shows that the question of the length of time the right to operate on the Garden Street line was clearly presented to the legislative mind and that the parties will full knowledge of the added period of duration conferred on the other line, definitely declined to prolong the life of the Garden Street line to the same date.

From the initial grant on Garden Street to this date, the franchise or right to operate on the streets covered by what is known as the Garden Street line was treated as separate and distinct. The language used as applied to it, both in the title and the body of the several ordinances, extending

it, double tracking it, renewing it, or electro-equipping it, show that its identity as well as its period of duration was not controlled by any other line owned by the Street Railway Company. This long line of settled legislation; these many contemporaneous constructions of the grants with respect to it, leave the indelible conclusion that the franchise of the Garden Street line stands on a footing different from that of the other lines owned by The East Cleveland Railroad Company, and that it expires on the 22nd of March, 1905. The expression also is "the Garden street branch," "the present grant for the Garden street line," or the "Garden street main line." And since, on January 14, 1868, it was created and granted as a separate and original route, and on March 22, 1880, renewed as a separate and independent route, and on March 10, 1890, electro-equipped as a separate and independent route, it does violence to every consideration of law or propriety now to assert that it is merely an extension of the Euclid Avenue main line and has no separate contract life.

The ordinances relied on to discredit the foregoing conclusions are those of February 9, 1885 (Record, page 211); March 30, 1891 (Record, page 227), and April 20, 1891 (Record, page 228).

A few words, therefore, in discussion of each of these separate ordinances may be necessary to show their true relation to the matter under consideration.

The ordinance of February 9, 1885, is entitled:

> "An ordinance to permit The East Cleveland Railroad Company to extend the Garden street branch of its railway."

The ordinance on page 211 of the Record contains a mis-print, in that in the ninth line, the words: "and terminating with the grant for the main line" is omitted. The bill and answer (Record, paragraph 17, pages 117 and 146), as well as the stipulation of counsel show that these words are a part of the ordinance. The expression therein "terminating with

the grant for the main line" standing alone and taken out of the context might be held to refer to what has been usually called the main line of The East Cleveland Railroad Company, that is the line on Euclid Avenue. The title of the ordinance, in view of the statute law of Ohio, as well as the subject matter, tend to repel any such inference. The insignificance of the track extension as compared with the rest of the Garden Street line also repel such an inference. The language is limited to the extension thereby made, and it is inconceivable that the Council would intentionally fix a date of expiration for this small extension different from the line thereby extended; and to infer that the Council meant by implication also to prolong the life of the large trackage of the route to which the extension is annexed, is contrary to the usual rules of interpretation of contracts between private individuals, and in absurd violation of the rules of law with respect to which contracts in derogation of public right are construed. Especially is this true when in the ordinance of March 22, 1880 (Record, page 200) as well as in all of the ordinances renewing or prolonging the life of the franchises of The East Cleveland Railroad Company, we have found the Council using apt words whenever it meant to confer the right of continued operation for any part of the line not covered by the track extension.

The words

> "to equip and operate said extension as a single track railroad in connection with its said branch and main line"

are much relied on, and, it is insisted, the Council, by the use of such words, meant to prolong the life of the main line to the date fixed for the expiration of the right to operate the extension. This view has already been adequately discussed. In addition to what has already been said, it must be borne in mind that neither the Council nor the Railroad Company, until this litigation, ever attached any such meaning to such words.

In the ordinance of May 23, 1876 (Record, page 202), the expression is used

> "to equip and operate said extension for twenty years in connection with said branch and its main line."

This expression, if susceptible of the meaning now sought to be given it in other ordinances, would have prolonged the franchise of the Euclid Avenue line until May 23, 1896. It would also have prolonged the life of the so-called main line on Euclid Avenue until the same date. Nevertheless the company in 1879 sought and obtained a renewal of its franchise for twenty-five years from and after September 20, 1879, on the Euclid Avenue line. Notwithstanding this provision and the meaning now sought to be given it, on March 22, 1880, the Company sought and obtained a separate renewal of its franchise for its Garden Street line for twenty-five years from and after that date. This is a contemporaneous construction by the parties of this language which is not without force.

In addition thereto, let it be remembered that on February 5, 1885, the main line, meaning thereby the franchise of the Euclid Avenue line, expired September 20, 1904. If the meaning of the ordinance under discussion was such as is now insisted on, its effect was to shorten the franchise for the Garden Street line to September 20, 1904. Obviously it was not intended by the parties to have such an effect. It is equally obvious that the subsequent renewal by a separate ordinance of the Euclid Avenue main line limited expressly to the right to operate on Euclid Avenue could have no effect of changing the date fixed on Garden Street by this ordinance of February 9, 1885. This is applying the familiar rule that where a statute or an ordinance is incorporated into a contract, and that ordinance or statute is afterwards amended or changed, the amendment or change is not thereby incorporated into the contract.

This language, whatever may be its meaning and effect, is not used consistently by the Council in subsequent ordinances relating to the street railway on the streets covered by the Garden Street branch, so as to evidence any fixed intention or purpose.

On June 17, 1887 (Record, page 217), an ordinance was passed which is entitled:

> "AN ORDINANCE to permit The East Cleveland Railroad Company to extend the Garden street branch of its railway."

The language used so far from showing that the parties then thought the franchise for the Garden Street line had become merged in the franchise for the Euclid Avenue line and expired with it, shows just the contrary. The words "Garden street branch" in the title, and the words "branch and its main line," also the words "terminating with the grant for the *Garden street main line,*" followed with the words "on any part of its main line or on said extension by reason of said extension" as used in the body of the ordinance, show conclusively that on this date the parties regarded the franchise for the Garden Street line as separate and independent, and as having a separate and independent date of expiration. That there may be no doubt on this point, the Council used the words "terminating with the grant for the Garden Street main line." This shows that Garden Street was regarded as having a main line of its own separate from the so-called main line of The East Cleveland Railroad Company; and the expression "main line" as used in the ordinance of February 9, 1885, as well as of March 30, 1891, is just as referable to this view as to any other, and is supported by the inherent reasonableness of such a construction.

More important still is the fact that at a later date the Council and the Company made the contracts already reviewed for the electric equipment. These contracts preserve the separate identity of the franchises and the separate dates for ex-

piration. As to the Euclid Avenue main line and its extension on Cedar Avenue, a new date eight years in the future is agreed upon for a valuable consideration.

The ordinance authorizing electric equipment on the Garden Street branch is limited by its title to effect a purpose distinctly different from that authorizing the electric equipment of the Euclid Avenue line. That authorizing the electric equipment on Euclid and Cedar Avenues describes its purposes in the title as granting

> "the right *to construct and operate an electric street* railway on Euclid and Cedar avenues."

This was manifestly proper if, as seems to have been the fact, it was intended to make an entirely new contract, and to fix a new duration of the term for the operation of the road. A new date of expiration was so fixed.

The ordinance, however, authorizing electric equipment on the Garden Street line describes its object in the title as

> "granting the right *to substitute electric motive power* for horse power upon its Garden street branch."

This was eminently proper, if, as the fact seems to have been, it was intended not to prolong the period of operation, but merely to authorize a change in motive power. The ordinance, however, deals with the entire length of the Garden street line, to-wit, from the intersection at Prospect and Erie streets with the so-called main line on Euclid Avenue easterly over all the streets along which the Garden Street branch had at any time by any ordinance or resolution been extended. The right of operation by electricity covers all this territory, but it does not cover any other territory. Now, as has been urged many times in kindred branches of litigation, it was germane to the object to be accomplished by this ordinance to deal with the period during which the right to operate by electricity should continue. At all events, the ordinance did so deal with it. The right of operation is only "during the

term of its present grant for the Garden street branch." If it be true that all parties to this contract had thought the preceding ordinances had destroyed the separate identity of the Garden Street branch, or if it had been intended by this ordinance to make its right of operation co-determinate with that on Euclid Avenue or the main line, it would have been easy to have said so. Had the Council merely used the language "terminating with the grant for the Company's main line" there might have been much to be said in favor of the plaintiff's present contention; but this ordinance looks backward, not to the franchise on Euclid Avenue or the main line for the date of expiration, but to the present grant of the Garden Street branch, a grant which, as we have seen, was originally created as a separate and independent line, and continuously dealt with and renewed as a separate and independent line. The Council must have meant and did mean by this language to fix and adopt the date of March 22, 1905, as the date for the expiration of the right to operate by electricity on the streets described in this ordinance. And those streets are the only ones now in dispute.

This conclusion is sustained by the decision of this Court in the case of *City of Cleveland v. The Cleveland Electric Railway Company*, 201 U. S., 529. It was held in this case that in authorizing a change from animal to electric power and providing for the continued operation of the road with the new power

> "until the expiration of the present grant of the Company, to-wit, February 10, 1908,"

a uniform date of expiration was also fixed for all the lines over which the electric equipment was extended. In consequence of this ruling, a franchise for a part of the lines which had been limited to expire September 20, 1904, was prolonged until the 10th of February, 1908.

The ordinance of March 30, 1891 (Record, page 227), apparently has no other object as disclosed by the title or the

body of the ordinance than to authorize the construction and operation of a second or additional track. This additional track was for a short distance between Willson Avenue and Baden Street. It was not even an extension of existing tracks. The right to construct and operate a street railway on this section of Garden Street had been conferred by previous ordinances. The street railway was already there in existence and in operation. To facilitate the more convenient operation of the road, an additional track was authorized. There are no words in this ordinance such as has been so much dwelt on providing that these tracks shall be *operated in connection with existing tracks* on the Garden Street or any main line. The permission is merely to lay and operate a second or additional track, and to connect said tracks with the tracks already upon Central avenue, formerly Garden street. The language is:

> "The right herein granted shall be valid until the expiration of the grants for the Company's main line."

It is inconceivable that in granting a right of such relatively small consequence, there should have been concealed a latent purpose to have fixed a new date of expiration not only for this track, but for all the track upon Garden street. Apt language to accomplish such a result had been used many times by the Council. If such a purpose had been definitely and clearly presented for the consideration of the legislative mind, it is by no means certain that the ordinance in any form would have been adopted. Manifestly the privilege of operation for a longer period than that definitely fixed, if it exists in these words was so covered up and cloaked by artful duplicity of language that no member of the Council, even had he been a lawyer, would have discovered it.

It must also be borne in mind that the Garden street or Central avenue *had a main line of its own.* The expression used in the ordinance of June 17, 1887, was "The Garden street main line."

The privilege of laying an additional track was merely an incident to the principle subject of a previous valid grant. The second track is neither an extension nor a renewal. It is not the establishment of an original route. It is not governed by the requirements of Section 2502 or 2505. It is a mere incident of the contract between the City and the Street Railway Company. It is, like an extension, a mere integral part, but only a part of the main body of the property. The life of the right to operate it must, in the very nature of things, terminate with the life of the main body of which it is a part.

These observations which are abstracted in the main from the opinion of the learned Judge of the Court below conclusively forbid the giving of any effect to this ordinance so far as it is contended it prolongs the life of the franchise of the Company.

The ordinance of April 20, 1891 (Record, page 228), is also an ordinance having for its sole object the granting of permission to lay an additional track in Quincy street. All the observations made in regard to the last ordinance under review apply with equal force to this ordinance. The expression as to the duration of the right is that

> "it shall be valid until the expiration of the grants of said Company's tracks on Quincy street east of Lincoln avenue, to-wit, July 13, 1913."

This language carries with it less weight even than that of the last ordinance. The expression "the Company's main line" is more confusing and more readily susceptible of being twisted into an inference that there was some relation between the right thereby granted and the franchise of the Company on Euclid avenue, for the latter has been usually spoken of as the main line of The East Cleveland Railroad Company. This street, however, is a different one from that mentioned in the last ordinance, and the expression used shows that the Council had not yet imbibed the idea that the grant for the Garden

street or Central avenue line had lost its separate and independent existence and was merely an extension of the main line and Euclid avenue, and expiring at the same time. The language recognizes the fact that the grant of the Company on Quincy street is a different matter from the grant of the Company on some other street.

The Company's tracks on Quincy street east of Lincoln avenue were authorized by the ordinance of February 9, 1885. That ordinance did not fix July 13, 1913, as the date for the expiration of the grant. The expression in the ordinance of February 9, 1885, "terminating with the grant of the Company's main line" could have meant only one or the other of two dates, September 20, 1904, or March 22, 1905, and if the former of the two dates is meant, then it was prolonged by the ordinance of March 10, 1890, authorizing electric equipment until March 22, 1905, the date adopted thereby for the expiration of all the Garden street line. The words, "to-wit, July 13, 1913," are an obvious mistake. The draftsman, if he consulted the ordinance of February 9, 1885, may readily have seen that the main line on Euclid avenue had been prolonged to expire July 13, 1913, and used language assuming this date; but by no means undertaking to fix it as the date of expiration for the right thereby granted. As was stated in the opinion of the Court below:

> "The conclusive answer is that the grant for the Company's tracks in Quincy street east of Lincoln avenue did not and would not expire July 13, 1913. The ordinance did not state the fact."

The mis-recital after the *videlicit* cannot control the fact which is made the primary test as to the date of expiration of the new right conferred by the ordinance last mentioned. The uniform rule of construction when there is a conflict between the precedent matter and that which follows a *videlicit* is well known. The former controls and the latter is disregarded.

Sullivan vs. State, 67 Miss., 346;

Gleason vs. McVickar, 7 Cow., 42, 43;
Commonwealth vs. Quinlan, 153 Mass., 483-4;
Buck vs. Lewis, 9 Minn., 314;
Stukeley vs. Butler, Hob., 175;
Cotton vs. Ward, 19 Ky., 310.

Still further enforcing this conclusion are the two ordinances of July 17, 1893 (Record, page 232-4), and of June 25, 1894.

The one first mentioned authorizes The Cleveland Electric Railway Company which, by this time had absorbed the lines of The East Cleveland Railroad Company, to extend its tracks in Prospect street from Erie to Ontario street, and along certain parts of Seneca, Lake and Ontario streets. This was a physical addition to the tracks previously maintained in Prospect street and which were and had been from 1859 a part of the Euclid avenue or main line of The East Cleveland Railroad Company. The streets covered are not a part of those included in the Garden street line which, while made to commence at the same point of intersection, are constructed therefrom in a different direction. The language as to the expiration of the right is definite and express. It is:

> "This grant shall be in force until the 13th day of July, 1913."

Mark the apt English words which the parties make use of when they intended to confer a right to operate a track extension to a specific date! It does not say that the grant shall be in force until the expiration of the Company's grant for its tracks in Prospect street, to-wit, July 13, 1913; but to the specific, definite date. Inasmuch as the tracks which were being added to by this extension did expire on the 13th day of July, 1913, there was no necessity for the use of any circumlocution, and none was attempted or practiced. The fact that in making the extension on Quincy street the right was limited to expire with the Company's tracks in Quincy street east of Lincoln avenue implies that a different thought was

in the minds of the parties, and that thought was not to prolong the right to operate tracks in Quincy street beyond the date of pre-existing grants, and to make the right to operate the additional track expire with the expiration of the existing tracks.

The other ordinance of June 25, 1894, granted the right to extend tracks in Quincy street westwardly from New street to Willson avenue. Previously, the connection between Garden street or Central avenue and Quincy street had been made by way of New street. This ordinance removed the tracks from New street, extended the tracks westwardly in Quincy, and made the connection by way of Willson avenue. The observations heretofore made with respect to other ordinances apply with full force to this one. It would have been easy had the Council so intended to have said that this right shall expire with the grant for the Company's tracks in Willson avenue on July 1, 1914. It would also have been easy for the Council to have said that the right to operate the rest of the tracks in Quincy street shall be prolonged until a fixed date or until the date for the expiration of the grant in Willson avenue or in Euclid avenue. But the Council did nothing of the sort.

The language is:

> "This grant shall terminate with the grant for said Company's present line in Quincy street."

This also repels the inference that any one then believed that the Central avenue or Garden street franchise had become a part of a system or of the Euclid avenue line, and a new date of expiration had been fixed for the grant in Quincy street. The mere fact that the expression used is "the grant for said Company's present line in Quincy street" shows that the Company was intending to preserve the independent and separate identity of the Quincy street line, and also of its date of expiration. There is no expression that the extended tracks shall be operated in connection with any oth-

er tracks, or with the Company's main line or such like words which have been relied on in other connections as authorizing a right to operate the entire street railway as a system to a fixed date.

We submit, in conclusion, there is nothing in any of these ordinances adopted at any time which tend to support the idea that the Council had destroyed the separate existence of the franchise for the Garden street line and its extensions or that this line had been merged in the Euclid avenue main line in such a way as to confer the right to operate it to the same date; but on the contrary these ordinances, like all the others which we have reviewed, tend to create the indelible conclusion that the life of the Garden street line and the right to operate it throughout its length and over all its extensions and additional tracks was intended to expire at the same date, and that that date is March 22, 1905.

In this connection we abstract and adopt the language of the learned Judge who delivered the opinion of the Court below. After all, the conclusively satisfactory answer to the contention that the three ordinances relied on have the effect claimed for them is that it is intolerable to think that instead of using direct, explicit and easily framed language to grant a right which only the sovereign can grant, it may be conveyed by an implication to be raised by a process of reasoning which the lay mind has difficulty in comprehending, and which it could hardly discern at all if not pointed out; and that this implication may be so derived from apparently innocuous and insignificant words lost in the mazes of an ordinance of relatively small consequence. Fundamental powers of the sovereign to be used by a delegated body naturally untrained in the law's learning and rigidly restricted in its use, are not to be so exercised. In view of the contention here made, it is most significant and astonishing that in no single instance of an extension ordinance or of a right to lay an additional track does the title of the ordinance state that any such object was

in view, or that any prolongation of the time for expiration of either the main line or the Garden street branch was involved in the permission thereby given for the construction of an extension, or the laying of an additional track. But the law explicitly requires that the subject of an ordinance shall be clearly expressed in its title. What could more surely do violence to the letter and spirit and purpose of that legal requirement than to say that an ordinance entitled, an ordinance to permit some petty and relatively unimportant extension, should be found to contain within its sophisticatal implications a grant renewing for a term of years an important and far reaching franchise. Can such an implication from such an ordinance so entitled be justified either on the ground of reason or of propriety?

The soundness of the conclusion of the Court below that the right to lay an additional track, or merely to extend existing tracks are by statute made to expire with the existing tracks so extended, cannot, we think, be successfully denied. Such was the object and purpose of the statute. The reasons of the Court below leave nothing to be added upon this point.

This being true, in the absence of explicit, express and unequivocal language disclosing an intention to relinquish the pre-existing franchise for the lines so extended, and to make a renewal grant in the place thereof, this rule of law would control any definite language fixing for the extension of tracks or the additional track a date of expiration beyond that of the original grant. Either the original grant must be surrendered and a renewal grant made at the time and by the ordinance making the extension or authorizing the additional track; or any new and independent life with which the extension of track is endowed, must, of necessity, be controlled by the life of the parent grant.

The consequences of inferring an intent to surrender

the parent grant and to renew it from words apparently limited to the new right of extension conferred by the ordinance, are too far reaching to warrant the adoption of a contrary view. It is manifest the Council of the City of Cleveland never entertained the idea that such implications could be drawn from its acts. No doubt the person seeking a right in public property will take anything that can be had, and will accept for an extension the longest date of expiration the Council will confer. But to permit the trackage of a system hundreds of miles in length to be prolonged by such implications in an ordinance authorizing the extension of a few hundred feet, is to do violence to every known rule of law. Rather, the rule as to the expiration of such extensions with the expiration of the parent grant must and will apply in all cases where there is not plain, direct and unequivocal English words authorizing in direct terms the renewal or prolongation of the life of the parent grant.

Attention is called to the fact that the street railway franchises now owned by the plaintiff were all created and granted as original routes for separate and independent lines. There were not less than ten of them owned at one time by not less than six different companies. In effect, these made ten different street railway routes, and the ordinances establishing such routes and granting leave to construct and operate created in the grantees an easement or privilege in the streets which may be likened unto a leasehold interest for a fixed term.

It will be noted that these expire at different dates unless the contention that a unified system has been created which must, of necessity, expire at one time, or unless an extension of tracks granted to the consolidated company operates as an extension of franchises for all the rest of the trackage.

The considerations which have been herein urged might be applied with equal force to every one of these routes. That

is to say, an examination of the origin and development of each one of these routes would show that the Council as well as the grantees had acquired and dealt with and legislated for each of these routes as a separate, distinct entity. The considerations urged here in order to support the conclusion desired should be of sufficient weight to control the situation with respect to each of these independent routes which may be in many instances more distinct and definite than the independent identity of the Garden street line.

We respectfully submit that the contention of the plaintiff in this respect cannot be maintained.

VIII.

THE FAILURE OF THE COURT BELOW TO DECLARE THE ORDINANCE OF JANUARY 11, 1904, WHOLLY NULL AND VOID.

The plaintiff below assigns as an additional ground of error that the Circuit Court did not in its decree declare entirely null and void the ordinance of January 11, 1904. It asserts that this ordinance was not only void as impairing the obligation of its contract and as taking a part of its property without due process of law, but that it is also void because made in contravention of the laws of the State of Ohio.

Under any view of the case, we submit the plaintiff by the decree was given all the relief to which it was entitled. A sufficient answer to its assumption that the decree should have gone further is that the plaintiff had no right to protect except what was protected, namely, its property in its tracks, poles, wires and appliances constructed and maintained in the streets. Its right to continue the operation of a street railway therewith in the street was held not to exist. Not having any further right to protect, it was not error in the Court below to have refused to annul wholly said ordinance, even though the position was well taken in law.

That position is this: The Council of the City of Cleveland, without public notice and competition as to the rate of fare such as is required when an original street railway route is established and a grant made based thereon, made a direct grant to The Forest City Railway Company, assuming its right to do so on its interpretation of the statute authorizing renewals on terms considered by it conducive to the public interest. If such a grant can be made to any person other than the one to whom the initial grant was made or one in privity with him, then such advertisement and competition, it is conceded, are not necessary. The debatable question is whether such a direct grant can be made on the same footing as if an existing street railway grant was being renewed to the owner thereof.

This question is in issue in a suit pending in the state courts of Ohio and is still undetermined. The Court of first instance held adversely to the position of the City and of The Forest City Railway Company. The reasons for such holding appear in a copy of the opinion of the Judge of the Court of Common Pleas of Cuyahoga County appearing in this Record, pages 96 to 104. Whether that holding is correct or not is properly triable in the State Court.

The plaintiff in this case has no right to try that question. So far as it is concerned, the question does not arise and cannot arise on the pleadings in this cause. It sued herein, not as a tax-payer or a member of the corporation of the City of Cleveland seeking to enjoin an act of the municipal authorities in contravention of law, but merely to protect a contract or a property right. In so doing, we submit, public questions such as go merely to the irregular exercise of a plenary power vested in a co-ordinate branch of the Government, cannot be litigated.

Sections 1777, 1778 and 1779 of the Revised Statutes of Ohio (see Appendix hereto) have vested that power in the City Solicitor. He shall apply in the name of the corporation

for an order of injunction to restrain the misapplication of the funds of the corporation or the abuse of its corporate power or the execution or performance of any contract made in behalf of the corporation in contravention of the laws or ordinance governing the same, or which was procured by fraud or corruption.

In case he fails to do so, any taxpayer of the corporation may request him in writing so to do, and if he fail or refuse, then the taxpayer may institute such suit in his own name on behalf of the corporation. The effect of these provisions is not only to provide a remedy, but to draw within the control of the public authorities in a suit to be conducted in behalf of the corporation and binding all of the taxpayers thereof, all rights of action to annul the public acts of the legislative department of a municipality. See the following cases:

Hensley vs. Hamilton, 3 O. C. C., 201, 206;
White vs. Village of Pleasant Ridge. 12 C. C., 177;
Hallock vs. Columbus, 1st N. P. n. s., 205.

Not only did the plaintiff not sue as a taxpayer to protect the public right, but at the time this suit was instituted, neither a taxpayer nor the City Solicitor could have brought such a suit. The grant was made on January 11, 1904. The bill in this case was filed on the 21st of March, 1905, more than a year thereafter.

Section 137 of the Municipal Code of Ohio (R. S. 1536-663; see Appendix) has adopted a statute of limitations which applies to acts of this character. It was passed October 22, 1902, and went into effect May 4, 1903. It is a matter of public history that the object in passing it was to protect certain street railway grants in the City of Cincinnati that had been irregularly made, and attack upon which was threatened on the ground that they had been made in cor-

as is contemplated shall be brought or maintained unless such action is commenced within one year from the date of such contract. A grant or leave to construct and operate a street railway company has been held in Ohio to be a contract within the meaning of these sections.

Cincinnati, etc. Ry. Co. vs. Smith, 29 O. S., 291.

IX.

THE ERROR COMPLAINED OF IN THE CROSS APPEAL.

The defendants below, The Forest City Railway Company, and the City of Cleveland, in their cross appeal assign as error the action of the Court below in holding that the ordinance of January 11, 1904, attempted to confer on The Forest City Railway Company a right to take the tracks, poles, wires and appliances erected and maintained in the streets, and in awarding an injunction against the two defendants by reason thereof.

This assignment of error presents for consideration the following questions:

First. Was there made on the bill and answers any case tending to show that there was any pending attempt to take, without due process of law, any property right of the defendant in the tracks, poles, wires and appliances erected in the streets?

Second. What property right, if any, a street railway company has in the tracks, poles, wires and appliances erected in the streets under a determinate grant at or after the expiration of their grant?

Speaking to the first question, we admit that if the plaintiff has a property right after the expiration of its grant in such tracks, etc., the ordinance of January 11, 1904, and the allegations of the plaintiff's bill makes the case sufficient to justify an injunction. The averments of the bill,

however, are in part denied by the answer. The provisions of the ordinance, so far as they are susceptible of the construction put on them in the bill, are qualified by the subsequent proceedings under the ordinance and disclaimers of the answers by the defendants.

See paragraphs 18 and 19 of the answer (Record, pages 177-8).

The answer and the subsequent resolutions of the Council manifest no intent to deliver the possession of any property of the plaintiff to the defendants, but only to deliver possession of the streets occupied by the plaintiff. As to its tracks, poles and wires the most that is threatened is to institute or cause to be instituted such proceedings as may be appropriate in a court of competent jurisdiction, to determine whether or not the plaintiff had any property right in its tracks, etc., after the expiration of its franchise, and to ascertain the value thereof. A threat to institute a suit in a court of competent jurisdiction and a disclaimer of any intent to proceed otherwise scarcely makes a sufficient case to warrant the granting of an injunction to prevent the taking of that property without due process of law.

Speaking to the second question above stated, we admit our inability to present to the Court any controlling authority.

In Ohio, however, the municipalities are the owners of the fee in the streets.

Traction Co. vs. Parrish, 67 O. S., 181.

Rails, ties, poles, when laid and constructed on an ordinary right of way of a railroad company, become a part of the realty both for the purpose of taxation and as between the mortgagee of the realty and the mortgagee of the chattel given before it was annexed to the realty.

Cleveland vs. C. and N. Ry. Co., 1st Cleve., 304;
Northern Indiana Ry. Co. vs Connelly, 10 O.

S., 160. Opinion page 164.

Merriam vs. Brown, 128 Mass., 391;

Hunt vs. Bay State Iron Co., 97 Mass., 279;

Clemens Elec. Mfr. Co. vs. Walton, 173 Mass., 286;

Providence, etc., Ry. Co. vs. Wright, 5 R. J., 459.

With respect to rails, ties and poles erected in a street for the purpose of operating a street railway, the reasons for holding that such property become permanently a part of the realty are even stronger. It is a matter of common knowledge that poles are erected with concrete foundations, making it impossible to remove the pole except by severing it at the surface of the earth. The ties and tracks are constructed chiefly below the surface of a street, and are paved over and about in such a way as to expose only the upper surface of the rail. Such property can only be removed by destroying practically sixteen feet of paving and changing entirely the character of that part of the street. The right of removal which a tenant possesses may be exercised only when there is no substantial injury to the realty.

Even in those cases of landlord and tenant in which the right of removal exists, it must be exercised at or before the expiration of the lease. In this case, at the time the decree was made, the right of the complainant in the streets had expired. It stood in the same situation as a tenant for a fixed term, who, if he wishes to exercise his right of removal, must do so before the expiration of his term. The law with respect to landlord and tenant may be found in the following authorities:

2 *Taylor, Land. and Ten.,* 8 Ed., Sec. 55;

Watriss vs. First National Bank of Cambridge, 124 Mass., 694; 26 Am. Rep., 694;

Stokee vs. Upton, 40 Mich., 581; 29 Am. Rep., 560;

Ex-Parte Brook, 10 Chan. Div., 100, per Thesiger, L. J.;
Merritt vs. Judd, 14 Cal., 59;
Loughran vs. Ross, 45 N. Y., 792;
Carlin vs. Ritter, 68 Md., 478; 6 Am. Rep., 467;
Hafleck vs. Stover, 11 O. S., 482.

CONCLUSION.

For all the foregoing reasons, it is respectfully submitted that the Court below did not err in holding that the plaintiff's right to operate on Garden or Central avenue expired as of the 22nd day of March, 1905; nor in refusing to declare wholly null and void the ordinance of January 11, 1904; and it is insisted that the decree should be modified so far as it holds that the plaintiff below had any property right in its poles, tracks, wires and appliances erected in the streets after the expiration of its right to maintain the same, and awards an injunction against the defendants on account of any alleged interference therewith without due process of law.

Respectfully submitted,
D. C. WESTENHAVER,
Counsel for The Forest City Railway Company.

Garfield, Howe & Westenhaver, of Counsel.

Appendix.

AN ACT
TO PROVIDE AND REGULATE STREET RAILROAD COMPANIES.

58 O. L., pp. 66-67.

"Section 1. Be it enacted by the General Assembly of the State of Ohio, That any number of natural persons, not less than five, associating to form a company for the purpose of constructing a street railroad, and becoming incorporated under this act, shall under their hand and seals, make a certificate, which shall specify as follows: 1. The name assumed by such company, and by which it shall be known. 2. The name of the street, alley, or avenue, with a description of the locality thereon of each terminus of said road, and the names of the streets, alleys, and avenues or other public grounds, through which such road shall pass. 3. The amount of capital stock necessary to construct such road. Such certificate shall be acknowledged before a justice of the peace, and certified by the clerk of the court of common pleas, and shall be forwarded to the secretary of state, who shall record and carefully preserve the same in his office; and a copy thereof, duly certified by the secretary of state, under the great seal of the state of Ohio, shall be evidence of the existence of such company.

"Section 2. That when the foregoing provisions have been complied with, the persons named as corporators in said certificate, and their associates, successors and assigns, by the name and style provided in said certificate, shall thereafter be deemed a body corporate with succession, with power to sue and be sued, plead and be impleaded, defend and be defended, contract and be contracted with, acquire and convey at pleasure all such real and personal estate as may be necessary and convenient to carry into effect the objects named in said certificate, in accordance with the provisions of this act; to make and use a common seal, and the same to renew or alter at pleasure—and do all needful acts to carry into effect the object of the incorporation. Such corporation shall be authorized to construct, operate and maintain a street railroad,

with single or double track, on the streets, alleys, or avenues, or other public ground specified in the certificate, with such side-tracks, turn-outs, offices, buildings and depots as they may deem necessary, between the points of termini named in the certificate, and transport thereon passengers and their packages and baggage.

"Section 4. That whenever the lines of road of any street railroad companies meet or intersect, and have been or may be constructed so as to admit the passage of cars over such roads continuously, without break or interruption, they are hereby authorized to consolidate themselves into a single corporation, in the same manner provided for the consolidation of railroad companies in sections twenty-one, twenty-two and twenty-three of the said act entitled an act to provide for the creation and regulation of incorporated companies in state of Ohio, passed May 1, 1852; and the said sections are adopted and made to be part of this act.

"Section 5. That hereafter, no street railroad shall be constructed or commenced until the consent of the city council or corporate authorities of the city, town or village wherein such road is to be constructed shall have been first obtained; and it shall be competent for the city council or corporate authorities of any city, town or village, to agree with any street railroad company, organized in pursuance of this act, or with any individual or company of individuals, desiring to construct a street railroad in such city, town or village, upon the manner and upon the terms and conditions upon which such corporation, individual or company of individuals, shall construct and operate a street railroad in such city, town or village: Provided, that no grant to occupy any street, lane or avenue, or public ground in any city of the first class, containing a population exceeding eighty thousand inhabitants, shall be made, except in accordance with sections fifteen and sixteen of an act passed March 3, 1860, relating to cities of the first class, having a population exceeding eighty thousand inhabitants."

Passed April 10, 1861.

AN ACT

TO AMEND "AN ACT TO PROVIDE FOR AND REGULATE STREET RAILROAD COMPANIES," PASSED APRIL 10, 1861, AND SUPPLEMENTARY THERETO. (Ohio Laws, vol. 58, p. 66.)

63 O. L. p. 55.

"Section 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO, That hereafter no street railroad shall be constructed or commenced until the consent of the council or corporate authorities of the city or incorporated village wherein such road is to be constructed shall have been first obtained, and it shall be competent for the council or corporate authorities of any city or incorporated village, to agree with any street railroad company, organized in pursuance of this act, or with any individual or company of individuals, desiring to construct a street railroad in such city or village, upon the manner and upon the terms and conditions upon which such corporation, individual or company of individuals shall construct and operate a street railroad in such city or village.

"Section 2. That the council of any city or incorporated village shall prescribe by ordinance the manner and the terms and conditions upon which the streets and avenues of such city or incorporated village may be used or occupied by street railroads, and shall make no grant and give no consent for the use or occupation of the streets or avenues for a street railroad until the public notice of the intention to make the grant, or give the consent and inviting proposals therefor at a specified time and place, shall be published for three successive weeks in one or more of the principal newspapers of said city or incorporated village, or having circulation therein; nor shall such grants be made or consent be given, except to such a company or such individuals, or company of individuals, as will agree to carry passengers upon said railroad at the lowest rates of fare, and all reductions of the rates of fare shall inure to the benefit of the passengers carried.

"Section 3. That when any council of any such city or incorporated village shall grant or give its consent to the use of the streets or avenues of said city or incorporated vil-

lage for a street railroad, the company, or individual, or company of individuals, obtaining such grant or consent, shall not proceed to construct said road, until the consent in writing of a majority of the owners of the lots abutting upon the street or avenue in which said road is to be constructed, shall have been obtained, and filed with the council of such city or incorporated village, and notice of such filing published as provided in the preceding section, not until the council, being satisfied that such consent has been obtained, shall so declare by ordinance or resolution, except as provided in the next succeeding section of this act."
March 27, 1866.

AN ACT
SUPPLEMENTARY TO "AN ACT SUPPLEMENTARY TO AN ACT TO PROVIDE FOR AND REGULATE STREET RAILROAD COMPANIES," PASSED MARCH 27, 1866. (S. & C., and S. C., 280, 281.)

66 O. L. p. 140.

"Section 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO, That it shall be lawful for the council of any city or incorporated village to grant permission by ordinance to any person or company, owning or having the right to construct any street railroad, to extend their track, subject to the provisions of sections four and five of said act passed March 27, 1866, on any street or streets where the said council shall deem such extension beneficial to the public. And when any such extension shall be made, the charge for carrying passengers on any street railroad so extended, and its connections made with any other road or roads, by consolidation under existing laws, shall not be increased by reason of such extension or consolidation; said sum shall include the government tax.

"Section 2. This act shall take effect from and after its passage."
Passed May 7, 1869.

Bates An. O. S., Vol. 1, p. 767.

(1536-131) M. C., Sec. 28.

In all municipal corporations council shall have the care, supervision and control of public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts and viaducts within the corporation, and shall cause the same to be kept open and in repair and free from nuisance; and with respect to the dedication, opening and vacation of streets, as well as labor upon them, sections 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2649-1, 2649-2, 2649-3, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2660, 2661, 2662, 2664, 2664-1, 2664-2, 2664-3, 2664-4, 2664-5, 2664-6, 2664-7, 2664-8, 2664-9, 2664-10, 2664-11, 2664-12, 2664-13 and 2664-14, shall be and remain in full force and effect. (96 v. 31, Sec. 28, October 22, 1902; in effect May 4, 1903.)

(1536-65) R. S. Sec. 2600.

After the plat or map is completed, it shall be certified by the surveyor, and acknowledged by the owner or owners before some officer authorized to take the acknowledgment of deeds, who shall certify his official act on the plat or map; and if any owner is a non-resident of the state, his agent, authorized by writing, may make such acknowledgment; and such plat or map, and if the execution is by agent, his written authority, shall thereupon be recorded in the office of the county recorder. (29 v 350, Sec. 4; S. & C. 1483; R. S. of 1880.)

"Sec. 3443 R. S. Council, or the commissioners, as the case may be, shall have the power to fix the terms and conditions upon which such railway may be construed, operated, extended and consolidated."

"Section 3437 R. S. Street railways, with single or double tracks, side tracks, and turn-outs, may be constructed or extended within or without and partly within and partly without, any municipal corporation or unincorporated village; and offices, depots, and other necessary buildings for such railways may also be constructed."

"Sec. 1536-184. Sec. 2501. No corporation, individual or individuals shall perform any work in the construction of a street railroad, until application for leave is made to the council in writing, and the council by ordinance shall have granted permission, and prescribed the terms and con-

ditions upon, and the manner in which the road shall be constructed and operated, and the streets and alleys which shall be used and occupied therefor, but the council may renew any such grant at its expiration upon such conditions as may be considered conducive to the public interest."

"Sec. 1536-185. Nothing mentioned in section 2501 of the Revised Statutes of Ohio shall be done; no ordinance or resolution to establish or define a street railroad route shall be passed, and no action inviting proposals to construct and operate such railroad shall be taken by the council; and no ordinance for the purpose specified in section 2501 of the Revised Statutes of Ohio shall be passed until public notice of the application therefor has been given by the clerk of the corporation once a week, for the period of at least three consecutive weeks in one or more of the daily papers, if there be such, and if not, then in one or more weekly papers, published in the corporation; and no such grant as mentioned in section 2501 of the Revised Statutes of Ohio shall be made, except to the corporation, individual or individuals, that will agree to carry passengers upon such proposed railroad at the lowest rates of fare, and shall have previously obtained the written consent of a majority of the property holders upon each street or part thereof, on the line of the proposed street railroad, represented by the feet front of the property abutting on the several streets along which such road is proposed to be constructed;

Provided, that no grant nor renewal of any grant for the construction or operation of any street railroad, shall be valid for a greater period than twenty-five years from the date of such grant or renewal; and after such grant or renewal of a grant is made, whether by special or general ordinance, the municipal corporation shall not, during the term of such grant or renewal, release the grantee from any obligation or liability imposed by the terms of such grant or renewal of a grant."

"Section 1536-188 R. S. Sec. 2505: The Council of any city or village may grant permission, by ordinance, to any corporation, individual, or company owning, or having the right to construct, any street railroad, to extend their track, subject to the provisions of sections three thousand four hundred and thirty-seven, three thousand four hundred and

thirty-eight, three thousand four hundred and thirty-nine, three thousand four hundred and forty, three thousand four hundred and forty-one, three thousand four hundred and forty-two and three thousand four hundred and forty-three, on any street or streets where council may deem such extension beneficial to the public; and when any such extension is made, the charge for carrying passengers on any street railroad so extended, and its connections made with any other road or roads, by consolidation under existing laws, shall not be increased by reason of such extension or consolidation."

(1536-663) M. C. Sec. 137. (Solicitors: Election, term and qualifications.)—The solicitor shall be elected for a term of two years, and shall serve until his successor is elected and qualified. The solicitor shall be an elector of the city, and admitted to practice law in the courts of Ohio.

(Powers and duties.)—The powers and duties of the solicitor shall be such as are provided in sections 1776, 1777, 1778, 1779 and 1780, of the Revised Statutes of Ohio; such as are provided in this act, and all other acts or parts of acts having uniform operation throughout the State and not inconsistent with this act, and he shall prepare all contracts, bonds and other instruments in writing in which the city is concerned, and shall serve the several directors and officers mentioned in this act as legal counsel and attorney; provided that no action, as provided in sections 1777 and 1778, to enjoin the performance of a contract or the payment of any bonds heretofore or hereafter entered into or issued by a municipal corporation, shall be brought or maintained unless such action is commenced within one year from the date of such contract or bonds, and this provision shall apply to pending cases.

(Shall be prosecuting attorney of police court.)—The solicitor shall also be prosecuting attorney of the police court, and shall receive for this service such compensation as council may prescribe, and such additional compensation as the county commissioners shall allow; provided, that where council allows an assistant or assistants to the solicitor, said solicitor may designate an assistant or assistants to act as prosecuting attorney or attorneys of the police court. The duties of the solicitor as prosecuting attorney of the police court shall be such as are provided in

section 1813 of the Revised Statutes; such as are provided in this act, and in all other acts or parts of acts applying to all cities of the State and not inconsistent herewith. In case of the inability or absence of the solicitor or any of his assistants to act as prosecuting attorney of the police court, the provisions of section 1815 of the Revised Statutes shall apply. (96 v. 65, sec. 137, October 22, 1902; in effect May 4, 1903.)

(1536-667) R. S. Sec. 1777. (City solicitor shall apply for injunction in certain cases.)—He shall apply in the name of the corporation, to a court of competent jurisdiction for an order of injunction to restrain the misapplication of funds of the corporation, or the abuse of its corporate powers, of the execution or performance of any contract made in behalf of the corporation in contravention of the laws or ordinance governing the same, or which was procured by fraud or corruption. And he shall likewise, whenever an obligation or contract made on behalf of the corporation granting a right or easement, or creating a public duty, is being evaded or violated, apply for the forfeiture or the specific performance of the same as the nature of the case may require. And in case any officer or board fails to perform any duty expressly enjoined by law or ordinance, he shall apply to a court of competent jurisdiction for a writ of mandamus to compel the performance of such duty. (66 v. 175, sec. 159, R. S. of 1880; 81 v. 189; 87 v. 122.)

(1536-668) R. S. Sec. 1778. (When the taxpayer may institute suit.)—In case he fail upon the request of any taxpayer of the corporation to make the application provided for in the preceding section, it shall be lawful for such taxpayer to institute suit for such purposes in his own name, on behalf of the corporation; provided that no such suit or proceeding shall be entertained by any court until such request shall have been first made in writing; and further provided that no such suit or proceeding shall be entertained by any court until such taxpayer upon motion of the solicitor or corporation counsel shall have given security for the costs of the proceeding. (67 v. 72, section 160, R. S. of 1880; 87 v. 122; 95 v. 317.)

(1536-669) R. S. Sec. 1779. (Duty of court.)—If the court hearing such case is satisfied that such taxpayer had good cause to believe that his allegations were well founded, or if the same is sufficient in law, it shall make such order as the equity and justice of the case demand;

(Costs.)—and in such case the taxpayer shall be allowed his costs; Provided, That if judgment is finally ordered in favor of such taxpayer he may be allowed as part of the costs a reasonable compensation for his attorney. (66 v. 175, section 161; R. S. of 1880; 95 v. 317.)

In the Supreme Court of the United States.

No. 197.

THE CLEVELAND ELECTRIC RAILWAY COMPANY,

APPELLANT,

vs.

THE CITY OF CLEVELAND AND THE FOREST CITY RAILWAY COMPANY,

APPELLEES,

AND

No. 321.

THE CITY OF CLEVELAND AND THE FOREST CITY RAILWAY COMPANY,

APPELLANTS,

vs.

THE CLEVELAND ELECTRIC RAILWAY COMPANY,

APPELLEE.

Brief for the City of Cleveland as Appellee in Case No. 197 and as Appellant in Case No. 321.

NEWTON D. BAKER,
City Solicitor.

Press of
The Gates Legal Publishing Co.,
Cleveland, Ohio.

In the Supreme Court of the United States.

THE CLEVELAND ELECTRIC RAILWAY COMPANY,

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THE CLEVELAND ELECTRIC RAILWAY COMPANY,

APPELLEE.

Brief for the City of Cleveland as Appellee in Case No. 197 and as Appellant in Case No. 321.

The cross appeals here presented raise two questions and grow out of the same cause. In case No. 197, in which The Cleveland Electric Railway Company is appellant, it is sought to reverse a judgment and decree of the Circuit Court of the United States for the Northern District of Ohio, Eastern Division, adjudging that the rights and franchises of The Cleveland Electric Railway Company to maintain and operate a street railroad in Central Avenue and Quincy and Erie Streets expired on the 22nd day of March, 1905.

In Case No. 321 The Forest City Railway Company, with which The City of Cleveland joins, appeals to this Court to reverse a decree adjudging void an ordinance of the City of Cleveland passed on the 11th day of January, 1904, entitled:

> "An ordinance granting to The Forest City Railway Company, its successors and assigns, the renewal right to maintain and operate the existing street railroads in the following streets,"

the streets referred to being those upon which the right of The Cleveland Electric Railway Company to maintain and operate a street railroad have been adjudged to have expired.

The questions thus presented are:

1. DID THE RIGHTS OF THE CLEVELAND ELECTRIC RAILWAY COMPANY TO MAINTAIN AND OPERATE A STREET RAILROAD IN CENTRAL AVENUE AND QUINCY AND ERIE STREETS EXPIRE ON THE 22ND DAY OF MARCH, 1905?

2. IS THE ORDINANCE OF THE CITY OF CLEVELAND, WHICH ATTEMPTS TO EMPOWER THE FOREST CITY RAILWAY COMPANY TO TAKE OVER AND CONTINUE THE OPERATION OF THE RAILROAD PREVIOUSLY OPERATED ON CENTRAL AVENUE AND QUINCY AND ERIE STREETS INVALID?

The questions thus presented arose as follows:

On the 21st day of March, 1905, The Cleveland Electric Railway Company filed in the Circuit Court of the United States for the Northern District of Ohio, Eastern Division, its bill in equity, asserting itself to be a corporation organized and existing under the laws of the State of Ohio, owning and operating various lines of street railway in the City of Cleveland and vicinity, and setting up in historical sequence, the various steps by which the complainant became a consolidated company and came into possession of various lines of street railroad in the City of Cleveland. It asserted that by reason of the facts averred in the bill its right to operate the street rail-

road in question had been, from the time of its original creation, renewed to the 1st day of July, 1914, and that the ordinance of the City of Cleveland, passed on the 11th day of January, 1904, attempting to grant to The Forest City Railway Company the renewal right to maintain and operate the street railroad, theretofore operated by the complainant, was a law of the State of Ohio, impairing the obligation of a contract in violation of the Constitution of the United States and therefore void, upon which averments an order of injunction was prayed against the City of Cleveland, its officers, and The Forest City Railway Company and its officers, prohibiting and restraining them from putting ordinance No. 42240, being the ordinance making the grant to The Forest City Railway Company, into effect and further enjoining all such persons from proceeding in any suit or action, or otherwise to compel the complainant to cease the operation of the line of railroad in dispute until the said 1st day of July, 1914, to which time the complainant asserted its right to continue.

On the 23rd day of March, 1905, a temporary restraining order was allowed upon the verified bill of complaint and upon the motion of the complainant, and a rule was issued against the defendants to appear on the 8th day of April, 1905, to show cause why the complainant's motion for a temporary injunction should not be granted. Both defendants filed answers to the bill of complaint (Record, pages 32 and 48), making various admissions and denials, and on the 8th day of April, the day set for the return of the rule to show cause, the complainant filed an amendment to its bill (Record, page 63), averring, in addition to the allegations contained in the original bill, that as to a portion of the lines of street railway operated by the complainant, a perpetual right to operate existed and that such perpetual right existed as to a portion of the lines covered by this controversy. Upon this state of the pleadings the amendment to the bill having been filed on the return day of the rule, the case was argued, and on the 24th

day of April, 1905, the Hon. R. W. Taylor, Judge, handed down an opinion (Record, pages 65 to 87) directing that a decree, denying the temporary injunction, be framed as if upon final hearing for the grounds stated in the opinion of the Court. A motion was made for a decree, in accordance with the Court's opinion on the 27th day of May, 1905, there having been previously filed amendments to the answers of the City of Cleveland and The Forest City Railway Company, covering the averments of the amendment to the bill of complaint (Record, pages 89 and 93). Further formal motions and proceedings were had until the 3rd day of October, 1905, when on application of the complainant by its solicitor, leave was given to file an amended bill and such a bill was filed (Record, page 107). This bill incorporates not only the averments contained in the amendment to the original bill filed at the time of the hearing on the motion for a temporary injunction but makes an additional attack upon Ordinance No. 42240, in that it attempted to take property of the complainant in the streets in question without due process of law and was therefore upon that ground invalid. Answers were filed to the amended bill of complaint, (Record, pages 137 and 159) and upon the issues so presented a final decree was passed, in accordance with the opinion of the Court, upon the hearing for a temporary injunction, so far as the date of the expiration of the complainant's rights was concerned but sustaining the contention of the complainant as to the invalidity of Ordinance No. 42240, on the ground that it did seek to take property without due process of law and was therefore invalid. From the former of these rulings The Cleveland Electric Railway Company appealed, to the latter, The Forest City Railway Company, the City of Cleveland joining, filed its cross appeal.

An inspection of this record will show that the rights sought to be established by The Cleveland Electric Railway Company are to be derived, if at all, from a mass of ordi-

nances of the City of Cleveland covering a period of about thirty years. To comprehend the exact effect of these various enactments, a historical statement arranging them in chronological order is necessary.

HISTORICAL STATEMENT.

The City of Cleveland is, and at all times mentioned in the pleadings in this case was a municipal corporation of the State of Ohio, situated in Cuyahoga County. Immediately adjacent to it on the east was and still is the Village of East Cleveland. In 1868, the dividing line between these two municipal corporations was known as Willson Avenue By various proceedings authorized by the statutes of Ohio, the municipal boundaries of Cleveland were from time to time enlarged, territory previously within the limits of the Village of East Cleveland becoming part of the City of Cleveland. In 1859 The East Cleveland Railroad Company was incorporated under authority of the incorporation law then existing in the State of Ohio, known as the act of May 1, 1852, and on November 1, 1859, July 3, 1860, and April 15, 1862, The East Cleveland Railroad Company received the consent and permission of the City of Cleveland for the operation of a line of railway beginning at the easterly limits of the city—Willson Avenue—and running thence via Euclid Avenue, Case Avenue, Prospect Street, Erie Street, Euclid Avenue, to and around the southerly and westerly sides of the Public Square to Superior Street; thence through Superior Street to Water Street. The consent of the City of Cleveland in these various instances was for the period of twenty years from the 20th day of September, 1859. This line was the original street railroad of The East Cleveland Railroad Company. (Record, pages 110, 161 and 182, 183, 184, 185 and 186.)

YEAR 1862.

On the 9th day of August, 1862, the trustees of East Cleveland Township pased a resolution and also an ordinance granting permission to The East Cleveland Railroad Company to construct and operate a street railroad in Euclid Avenue easterly from the intersection of Willson Avenue to Doan's Corners. The territory covered by this grant became a part of the City of Cleveland by annexation in the year 1872. The action of the trustees of East Cleveland Township was taken pursuant to an application by The East Cleveland Railroad Company, requesting that the right be granted as an extension of the tracks previously constructed, as hereinbefore shown. (Record, pages 111, 140, 187.)

YEAR 1868.

On the 14th day of January, 1868, the Council of the City of Cleveland passed a resolution (Record, pages 111, 141, 188) granting the consent of the council to The East Cleveland Street Railroad Company to enter upon and to lay down a track, with the necessary switches and turnouts, from the intersection of Prospect and Brownell Streets, there connecting with the street railroad already constructed by The East Cleveland Railroad Company, and running thence along the center of Brownell Street to its intersection with Garden Street; thence easterly along Garden Street to and across Willson Avenue to the easterly boundary of the City of Cleveland. (Record, pages 111, 141, 188.) By the terms of this resolution it is shown that the right granted by it to The East Cleveland Railroad Company *was an original grant, and not what subsequently came to be authorized by the statutes of Ohio, known as an extension.* The resolution (Record, page 188) recites that application for leave to construct a street railroad over the route described had previously been made by The East Cleveland Railroad Company to the City of Cleveland; that the consents of the owners of property abut-

ting upon the said streets had been duly filed with the city clerk; that the requisite notice for bids had been given, bids received and that The East Cleveland Railroad Company was the lowest bidder thereon. The resolution further limits the right therein granted to the period of twenty years from and after January 14, 1868.

This was the beginning of the so-called Garden Street line and upon the acceptance of the terms of the resolution on the 16th day of January, 1868 (Record, page 188), the situation was that the East Cleveland Railroad Company had two lines of railroad—its Euclid Avenue line inaugurated as we have shown, and its Garden Street line, which is the subject matter of this controversy, both resulting from original grants having no common operation, one limited to expire in twenty years from the 20th day of September, 1859, and the other limited to expire in twenty years from the 14th day of January, 1868.

In the same year, on the 30th day of March, The East Cleveland Railroad Company applied to the Mayor and Common Council of the Village of East Cleveland for permission to extend its branch railroad upon certain streets in the said village, and upon that application an ordinance was passed by the Common Council of the Village of East Cleveland authorizing the company to construct a branch railroad on Garden and other streets in the village, beginning at the termination of its branch road at the easterly line of the City of Cleveland, in Willson Avenue, running thence easterly in the center of Garden Street to its intersection with the center line of Baden Street; thence southerly on said center line to the southerly line of Wade Street; the ordinance further providing that no work should be done under it until property owner consents had been filed, and on the same day certain preambles and a resolution were introduced and adopted by the Council of the Village of East Cleveland, reciting that notice for three consecutive weeks had been published requesting bids from

different corporations and individuals; that The East Cleveland Railroad Company had made the most favorable bid, and that therefore the right was granted as above described for the construction and operation of the railroad for the period of twenty years from its completion, the construction to be commenced and completed within a period of five years from the date of the passage of the resolution.

This last ordinance and resolution were accepted by the company (Record, pages 190 and 191), the written acceptance binding the railroad company to the terms and conditions thereof.

The situation then was that The East Cleveland Railroad Company owned three railroads, the Euclid Avenue line, expiring on the 20th day of September, 1879; the Garden Street line, in the City of Cleveland, expiring on the 14th day of January, 1888; and the Garden Street line in the Village of East Cleveland, expiring somewhere between the 30th day of March, 1888, and the 30th day of March, 1893, the expiration depending upon the date of the completion of the construction authorized. Each of these railroads was a separate original grant made as then authorized by statute to the person or corporation agreeing to carry passengers at the lowest rate of fare, and not as extensions of one another.

Additional privileges were granted to The East Cleveland Railroad Company and the Kinsman Street Railroad Company for the construction of tracks from the east line of the Public Square in Euclid Avenue and in Superior Street by a resolution adopted July 1, 1868, the rights being limited to expire on the 1st day of July, 1888, the provisions of which resolution were accepted by The East Cleveland Railroad Company (Record, page 192).

Year 1870.

On the 2nd day of August, 1870, The East Cleveland Railroad Company and the Village of East Cleveland made

an agreement by which the tracks of the company were removed from the southerly side of Euclid Avenue in the Village to the center of the street. This agreement was authorized by an ordinance of the Village passed August 2 (Record, page 193), but departs from the terms of that ordinance in many particulars (Record, pages 193, 195 and 196). Neither the ordinance nor agrement as executed have any relation whatever to the Garden Street line of the company.

YEAR 1873.

On the 25th day of February, by a resolution of the council of the City of Cleveland, authority was given to The East Cleveland Railroad Company to lay a double track in Prospect Street between Erie Street and Case Avenue, and in portions of Case Avenue and Euclid Avenue (Record, page 197). The provisions of this resolution, which relates exclusively to the Euclid Avenue line of The East Cleveland Railroad Company, were accepted on the first day of March, 1873 (Record, page 197).

On the 25th day of March by resolution, the council of the City of Cleveland authorized The East Cleveland Railroad Company to change the route of its Garden Street line by removing certain tracks from Brownell Street and installing a double track from their track in Brownell Street to Erie Street which resolution was accepted (Record, pages 199, 200), and on the same day by resolution the council of the City of Cleveland authorized the East Cleveland Railroad Company to double track its Garden Street line between Brownell Street and Willson Avenue (Record, page 200). This resolution was likewise accepted by the company. Neither resolution contained any statement as to the date of expiration of the right then granted, both being apparently appurtenances of the existing Garden Street line, and controlled by its date of expiration.

YEAR 1876.

On the 23rd day of May the council of the City of Cleveland passed an ordinance authorizing The East Cleveland Railroad Company to extend the Garden Street branch of its road along Garden Street to Baden Avenue, along Baden Avenue to Quincy Street, along Quincy Street to New Street and along New Street to Garden Street (Record, pages 115, 143 and 202). This ordinance provided that the rights therein granted, should continue for twenty years from that date, thus limiting them to expire on the 23rd day of May, 1896, and that the extension should be operated in connection with the Garden Street branch and the main line.

YEAR 1879.

On the 15th day of September the council of the City of Cleveland passed an ordinance making a grant of a renewal franchise to The East Cleveland Railroad Company in and through certain streets of the City of Cleveland. The ordinance was passed pursuant to a petition for a renewal (Record, page 203), and among the recitals of the ordinance by way of preamble is reference to an act of the Legislature of Ohio, passed on the 12th day of June, 1879, authorizing renewals of grants to street railroad companies upon such terms and conditions as the council may deem conducive to the public interest. In section one of the ordinance the route of the Euclid Avenue line of The East Cleveland Railroad Company is described by streets as comprising the streets and parts of streets on which the renewal of franchises is granted. There is a complete exclusion of any of the streets operated by the Garden Street line. By section 11 of the ordinance the council reserves the right to authorize a joint use of the tracks of The East Cleveland Railroad Company east of Erie Street, that is from the point at which the Euclid Avenue line was tapped by the Garden Street line. Section 12 of the ordinance provides that "the authority and privileges in this ordinance

named and provided for are to be and remain in force for the full period of twenty-five years from the 20th day of September, 1879." (Record, pages 115, 144 and 204.)

It is further to be noted that the renewal grant thus made extends only to Willson Avenue and does not affect tracks beyond that point; as more fully appears from an ordinance passed in the year 1883.

YEAR 1880.

On the 22nd day of March, 1880, the council of the City of Cleveland passed an ordinance authorizing The East Cleveland Railroad Company to extend the Garden Street branch of its railway from the then existing track at the intersection of Baden Avenue and Quincy Street in an easterly direction to the intersection of Quincy Street and Lincoln Avenue, and to equip and operate the extension so granted and the Garden Street branch for a period of twenty-five years from the passage of the ordinance. (Record, pages 116, 145 and 208.) All of the territory covered by the original East Cleveland grants to the Garden Street line was at this time included in the City of Cleveland and the effect of this ordinance was to cancel and annul all outstanding grants and to renew for a definite and fixed period all grants previously made either by the City of Cleveland or by the Village of East Cleveland, to which the City of Cleveland had succeeded, limiting them to expire on the 22nd day of March, 1905.

After the passage of this ordinance The East Cleveland Railroad Company's Euclid Avenue line to Willson Avenue was limited to expire on the 20th day of September, 1904, by virtue of the ordinance of September 15th, 1879. Its Euclid Avenue line beyond Willson Avenue was operating under grants from the Village of East Cleveland hereinbefore exhibited and its Garden Street line was limited to expire on the 22nd day of March, 1905.

Year 1883.

On the 4th day of April, 1883, the council of the City of Cleveland passed an ordinance authorizing The East Cleveland Railroad Company to extend its double track in Euclid Avenue from the west line of Willson Avenue to the East line of Fairmount Street. (Record, pages 145 and 209.)

Section 3 of this ordinance limits the duration of the right therein granted to the 20th day of September, 1904, which is by this ordinance described to be the date of the expiration of the renewal of The East Cleveland Railroad Company's Euclid Avenue line lying west of Willson Avenue.

After the passage of this ordinance and its acceptance, which appears in the Record at page 210, the situation was that the Euclid Avenue line throughout was limited to expire on the 20th day of September, 1904, and the Garden Street line throughout was limited to expire on the 22nd day of March, 1905. Each line was then operating under a general renewal grant which had absorbed and substituted all previous piece-meal grants and the acceptance of which constituted a surrender of any rights theretofore outstanding.

Year 1885.

On the 9th day of February the council of the City of Cleveland passed an ordinance to permit The East Cleveland Railroad Company to extend its Garden Street branch from the intersection of Quincy Street and Lincoln Avenue in an easterly direction to Woodland Hills Avenue (Record, pages 117, 146 and 211). The language of limitation used in this ordinance is incorrectly printed in the Record at page 211 and should read as follows:

> "To equip and operate said extension as a single track railroad, with all necessary switches, turnouts and turn-tables in connection with said branch and its main line and *terminating with the grant for the main line*, but with the express condition that no

increase of fares shall be charged by said company on any part of its main line or on said extension by reason of said extension."

The true language of this ordinance is alleged in the bill of complaint (Record, page 117) and in the answer (Record, page 146).

At the time of the passage and acceptance of this ordinance the Garden Street line was limited to expire on the 22nd day of March, 1905, and the Euclid Avenue line on the 20th day of September, 1904.

YEAR 1886.

On the 15th day of March the council of the City of Cleveland passed an ordinance authorizing The East Cleveland Railroad Company to extend its double track street railroad in Euclid Avenue easterly from Fairmount Street to the easterly limits of the city, which ordinance was duly accepted (Record, pages 212, 213).

Section 5 of that ordinance provides that the rights therein granted shall cease and terminate on the 20th day of September, 1904, as provided for the company's tracks in Euclid Avenue west of Fairmount Street, which, of course, means the entire Euclid Avenue line of The East Cleveland Railroad Company.

In this year also, on the 16th day of July, the council of the City of Cleveland passed an ordinance authorizing The East Cleveland Railroad Company and The Brooklyn Street Railroad Company to extend their tracks and operate their railroads on Water, Lake and Bank Streets (Record, pages 214, 215). By section 4 of that ordinance it is provided that the right therein granted should expire on the part of each company with the grant for its main line respectively.

YEAR 1887.

On the 17th day of June the council of the City of Cleveland passed an ordinance to permit The East Cleveland Railroad Company to extend its Garden Street branch from the intersection of Baden Avenue and Garden Street, upon Garden Street to Lincoln Avenue (Record, pages 118 and 217). The language of limitation was (Record, page 217) that the right then granted should terminate with the grant for "*The Garden Street main line,*" which, as we have seen, was fixed by the ordinance of 22nd day of March, 1880, as the 22nd day of March, 1905.

YEAR 1888.

On the 13th day of July the council of the City of Cleveland passed an ordiance authorizing The East Cleveland Railroad Company to change its motive power upon certain portions of its line from horse power to electric power (Record, pages 118, 148 and 219). This ordinance was accepted by the Railroad Company (Record, page 221), and by its provisions, the right is granted to operate by electric power upon certain designated streets, all of them included within the Euclid Avenue line of The East Cleveland Railroad Company.

From section 1 of this ordinance it appears that an application was made for the right granted, the application being limited to the streets named in the granting clause of the ordinance. By section 6 of the ordinance it is provided that the privilege of constructing the electric system and the operation of its lines, as thereinbefore provided,

> "shall be in force for a period of twenty-five years from the date of the passage of this ordinance upon its main and Cedar Avenue lines."

The Cedar Avenue line, so-called, was a mere extension of the Euclid Avenue line and the date of the expiration of the Euclid Avenue line, as we have seen, was at this time the 20th day of September, 1904. After the passage and accept-

ance of this ordinance the date of expiration upon the Euclid Avenue and Cedar Avenue lines became the 13th day of July, 1913.

YEAR 1889.

The council of the City of Cleveland required The East Cleveland Railroad Company to electroquip certain portions of its Euclid Avenue line and Cedar Avenue line under the right reserved in the ordinance of July 13, 1888.

YEAR 1890.

On the 10th day of March, 1890, the council of the City of Cleveland passed an ordinance which was accepted by The East Cleveland Railroad Company, authorizing it to substitute electric motive power for horse-power upon the Garden Street branch of its railroad (Record, pages 119, 149 and 225). This ordinance in section 1 describes the route of the then existing Garden Stret line, naming the streets and parts of streets comprising it, and authorizing the company to erect and maintain on said streets, all necessary poles and wires, the necessary appliances and fixtures for the conducing of electrical currents to operate by electric power "the said Garden Street branch during the term of its present grant for said Garden Street branch." This term was, as we have seen, until the 22nd day of March, 1905, as fixed and determined by the ordinance of the 22nd day of March, 1880. There is no language in this ordinance which in any way requires the operation of this line in conjunction with any other line of The East Cleveland Railroad Company.

After the acceptance of this ordinance (Record, page 226), The East Cleveland Railroad Company's Euclid Avenue and Cedar Avenue lines were electrically operated and were limited to expire on the 13th day of July, 1913. The Garden Street line was electrically operated and limited to expire the 22nd day of March, 1905.

YEAR 1891.

On the 30th day of March the council of the City of Cleveland pased an ordinance, duly accepted by The East Cleveland Railroad Company, granting the right to construct and operate a second or additional track on Central Avenue, formerly known as Garden Street, from the east line of Willson Avenue to the right of way of The Cleveland & Pittsburgh Railway Company, the language of limitation being that the right therein granted should expire with the grants for the company's main line. This track was a part of the Garden Street road. The company's Euclid Avenue and Cedar Avenue lines expire in 1913, and the company's Garden Street line in 1905, and at least in one prior ordiance, namely that of June 17, 1887, the council of the City of Cleveland had used the language, "The Garden Street main line."

It is to be noted that this ordinance does not attempt to extend existing rights but by section 4 fixes the expiration of the right "*therein* granted."

On the 20th day of April the council of the City of Cleveland passed an ordinance granting to The East Cleveland Railroad Company permission to lay an additional or second track in Quincy Street from New Street to Woodland Hills Avenue (Record, pages 121, 150 and 288).

By section 3 of this ordinance it is provided,

> "The right herein granted shall be valid until the expiration of the grants for said company's tracks on Quincy Street east of Lincoln Avenue, to-wit, July 13, 1913."

The fact was that the rights of the company for tracks in Quincy Street east of Lincoln Avenue did not expire July 13, 1913, the right to those tracks having been granted in the year 1885 by the ordinance of Feb. 9th, the language of which ordinance was that the right should expire with the grant "for the main line."

At the time of the passage of the ordinance of 1885 The Euclid Avenue line was limited to expire September 20th, 1904, and the Garden Street line March 22, 1905, and when the ordinance of July 13, 1888 was passed by which the Euclid Avenue line grant was prolonged to July 13, 1913, no reference whatever was made to any tracks owned by the company in Quincy Street east of Lincoln Avenue. Moreover, on the 10th day of March, 1890 (Record, page 225), the council had passed an ordinance authorizing the substitution of electric power over the entire Garden Street line, including the tracks in Quincy Street east of Lincoln Avenue, and limiting the entire grant to expire during the term of the Company's then present grant for the Garden Street branch, so that by the two ordinances of March 22, 1880, and March 10, 1890, the tracks of the Garden Street line in Quincy Street east of Lincoln Avenue had been separated from any connection with the main line, if by that term was originally meant the Euclid Avenue line, and made a part of the Garden Street line, with a common period of expiration, viz., 22nd day of March, 1905.

YEAR 1893.

On the 22nd day of May the Cleveland Electric Railway Company addressed a communication to the council of the City of Cleveland informing it that The Cleveland Electric Railway Company has been organized on the 25th day of March by the consolidation of the East Cleveland Railroad Company and the Broadway and Newburgh Street Railway Company; that it had been further subsequently enlarged on the 24th day of April by consolidation with the Brooklyn Street Railroad Company and South Side Street Railroad Company; that these consolidations had been made under advice of counsel and were believed to be legal and valid in all respects; that in as much as question had arisen as to the intention of the new company, it desired officially to state to the council

> "That *it does not claim any greater rights than the constituent companies forming the organization;* that it intends to obey all the ordinances under which it and all of the constituent companies were subject; that it has, since such consolidation has been effected, issued transfer checks to all persons desiring them, to enable such persons to have a continuous ride from any east side line to any south side or west side line, and from any south or west side line of the company to any east side line, for one fare, and will continue such system of transfers where it could not better accommodate its patrons by such through lines as it may establish."

Subsequently thereto, on the 29th day of May, the council of the City of Cleveland passed a resolution assenting to this consolidation (Record, pages 230, 231).

On the 17th day of July, the council passed an ordinance authorizing The Cleveland Electric Railway Company to extend its tracks in certain portions of Prospect Street, Seneca Street, Lake Street and Ontario Street, limiting the right thereby granted to expire on the 13th day of July, 1913, and conditioning it upon the continued compliance by The Cleveland Electric Railway Company with the terms and conditions of the resolution adopted assenting to the consolidation previously made. The ordinance nowhere refers to the Garden Street line.

At this time The Cleveland Electric Railway Company as a consolidated company, owned the lines previously owned by The East Cleveland Street Railroad Company, to-wit, the Euclid Avenue and Cedar Avenue lines, limited to expire July 13, 1913; the Garden Street line, limited to expire March 22, 1905; the line owned by the Broadway & Newburg Street Railway Company, limited to expire July 1, 1914; the line of The Brooklyn Street Railway Company, limited to expire January 26, 1910; the line of The South Side Street Railway Company, limited to expire October 5, 1913; and the lines of The West Side Street Railway Company, limited to expire February 10, 1908.

YEAR 1894.

On the 19th day of February, 1894, the council of the City of Cleveland passed an ordinance entitled,

> "An ordinance granting permission to The Cleveland Electric Railway and The Cleveland City Railway Company, to extend their tracks in Willson Avenue,"

which was duly accepted by both companies (Record, pages 123, 152, 235). By the terms of this ordinance permission is granted to The Cleveland Electric Railway Company to extend its double track street railroad along Willson Avenue from its present tracks at the intersection of Scovill and Willson Avenues to the present tracks at the intersections of Perkins and Willson Avenues, and from its present tracks at the intersection of Hough and Willson Avenues to the northerly terminus of said Willson Avenue, with the necessary curves and connecting tracks, and permission was granted to The Cleveland City Railway Company to extend its double track railroad on and along Willson Avenue from its present tracks at the intersection of Woodland and Willson Avenues to the intersection of Lexington and Willson Avenues, and from its then present tracks at the intersection of Payne and Willson Avenues to the northerly terminus of Willson Avenue. The tracks thus authorized to be extended by The Cleveland Electric Railway Company were the tracks of its Scovill line, previously the property of The Brooklyn Street Railway Company, then limited to expire the 26th day of January, 1910, and the tracks of its Wade Park extension of the Euclid Avenue line, then limited to expire the 13th day of July, 1913. The tracks authorized to be extended by The Cleveland City Railway Company were the tracks of its so-called Payne Avenue line, then limited to expire the 26th day of January, 1910, and the tracks of the Woodland Avenue line, then limited to expire in 1908. By the terms of the ordinance the tracks and appliances authorized were required to be jointly constructed,

and each company was given the right to occupy and use them. By the language of Section 1, it is provided that the tracks are to be constructed and operated in connection with the existing tracks in Willson Avenue "*as a double track street railroad.*" By Section 10 it is provided

> "And this grant shall be in force until the 1st day of July, 1914."

Various conditions and requirements as to the mode of construction and operation of the railroad thus authorized are provided, and reservations are made to the council of the right to enforce the transfer of passengers from the various lines operated by the two companies to the new railroad. Section 6 of the ordinance (Record, page 236), provides that passengers on any line of either of the companies intersecting or coming to Willson Avenue, including the lines on Broadway, shall be entitled to reciprocal transfers without additional payment. This ordinance, beyond the provisions pointed out, contains no language of renewal or re-grant as to any lines operated by either company at that time.

On the 25th day of June, the council of the City of Cleveland passed an ordinance granting to The Cleveland Electric Railway Company the right to extend and operate its double track street railway then operated in Quincy Street from New Street to Willson Avenue. This was a portion of the Garden Street line constructed and owned by The East Cleveland Railroad Company, predecessor in title to The Cleveland Electric Railway Company. By Section 6 of this ordinance it is provided that the grant therein made shall terminate with the grant for said company's present line in Quincy Street. This ordinance, it will be observed, is subsequent to the Willson Avenue grant about four months, and makes the date of expiration specifically that of the Quincy Street line, and not of any general renewal grant attempted to be inferred from the provisions of the ordinance of February 19, 1894.

YEAR 1903.

On or about the 1st day of July, 1903, The Cleveland Electric Railway Company acquired by purchase all the property of The Cleveland City Railway Company, and from that time the property of these two companies has been operated by the complainant. The record shows no action by the council of the City of Cleveland sanctioning or recognizing this consolidation or purchase of these two companies which prior to that time had operated independently, and the fact is that the purchase by the complainant of the property of The Cleveland City Railway Company was never acted upon in any way by the council of the City of Cleveland, but was a consolidation initiated and carried out by the companies themselves without consulting in any way the public authorities.

A very large number of ordinances dealing with lines operated by the complainant company, and by various competing and independent lines, were passed by the council of the City of Cleveland during all the period covered by the foregoing chronological statement. Their importance, so far as this case is concerned, is illustrative, and they have been omitted from the statement in order to avoid confusion. By stipulation of counsel, a considerable number of these ordinances have been printed and will be submitted to the Court with the Record. The foregoing statement, however, refers specifically to every ordinance which affects the length of life of the grants of the Euclid Avenue line and the Garden Street line of The East Cleveland Street Railroad Company, or its successor, The Cleveland Electric Railway Company.

THE STATUATES OF OHIO RELATIVE TO THE CONSTRUCTION, EXTENSION AND CONSOLIDATION OF STREET RAILROADS, AND THE RENEWAL OF THE RIGHT TO OPERATE THEM.

For the purposes of this case the statutes of Ohio as they existed on the 19th day of February, 1894, and prior thereto, are important. Subsequent to that date no ordinance directly affecting the subject matter here in controversy was passed, and so far as the power of municipal corporations to deal with the subject matter of street railroads is concerned, no important change has been made since that time.

There are two sets of sections in the codified statutes of Ohio relating to the construction and operation of street railroads in cities. The sections known in 1894 as Sections 2501 and the following, appear in the chapter of the statutes devoted to the law governing municipal corporations. Sections 3437 and the following appear in the chapter of the statutes relating to railroads. In part these two bodies of law are coincident, and their language while not always the same, has been given an identical interpretation.

The things which are authorized by the Ohio statutes to be done by municipal corporations with reference to street railroads are:

1. The making of original grants.
2. The renewals of existing grants.
3. The extension of existing or authorized tracks.
4. Fixing the terms and conditions upon which consolidations may be made.

In like manner, under favor of these various statutes, street railroad companies are authorized to apply for and receive original grants; to apply for and receive renewals of existing grants; to apply for and receive authority to extend existing

or authorized tracks; to consolidate with other street railroad companies, and to acquire by purchase the rights of other street railroad companies. The following sections exhibit so much of the statutory law of Ohio as is material here, and the dates of the passage of the various sections are indicated, in order that the state of the law at the time of the passage of any of the various ordinances in evidence here may be determined:

> "Section 2501. No corporation, individual or individuals, shall perform any work in the construction of a street railroad, until application for leave is made to the council in writing, and the council by ordinance shall have granted permission, and prescribed the terms and conditions upon, and the manner in which the road shall be constructed and operated, and the streets and alleys which shall be used and occupied therefor; and cities of the first and second grade of the first class, and of the second grade of the second class may renew any such grant at its expiration upon such conditions as may be considered conducive to the public interest."

This section is given in the form received by it by the act of March 4, 1887. It was not again amended until 1896. Its original enactment was as part of the general municipal code of 1869.

> "Section 2502. Nothing mentioned in the next preceding section shall be done; no ordinance or resolution to establish or define a street railroad route shall be passed, and no action inviting proposals to construct and operate such railroad shall be taken by the council, except upon the recommendation of the board of public works in cities having such a board, and of the board of improvements in other municipalities having such a board; and no ordinance for the purpose specified in said preceding section shall be passed until public notice of the application therefor has been given by the clerk of the corporation in one or more of the daily papers, if there be

such, and if not then in one or more weekly papers published in the corporation, for the period of at least three consecutive weeks; and no such grant as mentioned in said preceding section shall be made, except the corporation, individual or individuals that will agree to carry passengers upon such proposed railroad at the lowest rates of fare, and shall have previously obtained the written consent of a majority of the property-holders upon each street or part thereof, on the line of the proposed street railroad, represented by the feet front of the property abutting on the several streets along which such road is proposed to be constructed; provided, that no grant nor renewal of any grant for the construction or operation of any street railroad shall be valid for a greater period than twenty-five years from the date of such grant or renewal; and after such grant or renewal of a grant is made, whether by special or general ordinance, the municipal corporation shall not, during the terms of such grant or renewal, release the grantee from any obligation or liability imposed by the terms of such grant or renewal of a grant."

This section is given in the form contained in the amendment made by the act of March 20, 1884. The substance of this act, so far as it affects this litigation, has remained unchanged since 1878, prior to which time the provision limiting grants to twenty-five years did not exist.

"Section 2502-a. That the release prohibited by section 2502 of the Revised Statutes may be given or made, except as to paving and repairing streets, whenever it involves a change of motive power from animal power to cable or electric power or other means for rapid transit or an additional obligation to pave or repair and keep in repair the streets along the line of railway or portion thereof; and in every such case such release may be made on such reasonable terms, including such extension of time as now authorized by law, as may be prescribed by ordinance,

and any release or change or extension of time of any grant heretofore made involving any such change of motive power or additional obligation to pave or repair and keep in repair as aforesaid, shall be as valid and binding as if such change or obligation had been made under this act, and this shall apply to actions and causes of action mentioned in section 79 of the Revised Statutes; provided, however, there shall not be any change made in the percentage on gross earnings and car license fees that may be required to be paid on such street railway route or routes or any portions of the same or in any extension of such route or routes; and whenever any rapid transit street railway route operated by cable or electric power has been, or shall be extended over the tracks of another route belonging to the same company, corporation, individual or individuals, upon which the cars are operated by horse power, the company, corporation, individual or individuals owning and operating such horse power route shall be no longer required or allowed, except to make necessary connections, to operate the same, and the right to operate horse cars over such route, or such portions of the same as a rapid transit route has been or may be extended over, shall be regarded as surrendered and abandoned by the acceptance of such extension; and provided further, that any ordinance or resolution relating to a street railroad, passed or adopted by the legislative or other municipal authorities of any municipal corporation of this state by improperly suspending the rules requiring the same to be read on three different days, or by improperly putting the same on its passage with one or more other ordinances or resolutions instead of taking a separate vote on the same, shall nevertheless be valid, and this also shall apply to actions and causes of action named in section 79 of the Revised Statutes."

This section was passed April 21, 1893, 90 O. L., 228-229, and repealed May 14, 1894, 91 O. L., 229.

"Section 2504. (Pavement of streets where railroads are constructed; proviso.) The council may require any part or all of the track, between the rails of any street railroad constructed within the corporate limits, to be paved with stone, gravel, boulders, or the Nicholson or other wooden or asphaltic pavement, as may be deemed proper, but without the corporate limits paving between the rails with stone, boulders, or the Nicholson or other wooden or asphaltic pavement shall not be required; provided, that in cities of the second grade of the first class, the council may require of any street railroad company to pave and keep in constant repair, sixteen feet for a double track or seven feet for a single track, all of which pavement shall be of the same material as the balance of the street is paved with."

This section, in substantially its present form, was a part of the municipal code of 1869 (66 O. L., 217).

"Section 2505. (Council of city or village may grant extension of street railroad.) The council of any city or village may grant permission, by ordinance, to any corporation, individual, or company owning, or having the right to construct, any street railroad, to extend their track, subject to the provisions of sections three thousand four hundred and thirty-seven, three thousand four hundred and thirty-eight, three thousand four hundred and thirty-nine, three thousand four hundred and forty, three thousand four hundred and forty-one, three thousand four hundred and forty-two, and three thousand four hundred and forty-three, on any street or streets where council may deem such extension beneficial to the public; and when any such extension is made, the charge for carrying passengers on any street railroad so extended, and its connections made with any other road or roads, by consolidation under existing laws, shall not be increased by reason of such extension or consolidation."

This section is given in the form contained in the revision of the statutes of 1880; in its original form it was an act of the General Assembly passed May 7, 1869, and read as follows:

> "That it shall be lawful for the council of any city or incorporated village to grant permission by ordinance to any person or company owning or having the right to construct any street railroad, to extend their track, subject to the provisions of Sections 4 and 5 of said act, passed March 27, 1866, on any street or streets where the said council shall deem such extension beneficial to the public. And when any such extension shall be made the charge for carrying passengers on any street railroad so extended and its connections made with any other road or roads by consolidation under existing laws, shall not be increased by such extension or consolidation. Said sum shall include the government tax."

This was the first statutory authority for extensions, so-called.

> "Section 2505-a. Any corporation or company organized for street railway purposes, may lease or purchase any street railroad, or street railroads, or railroad operated as a street railroad and by electric power or inclined plane railroad or railroads, together with all the property, real, personal and mixed, and all the franchises, rights and privileges respecting the use and operation of such railroad or railroads, situate or existing in whole or in part within this state, constructed and held by any other corporation or company, corporations or companies, the latter being hereby vested with corresponding power to let or sell, upon such terms and conditions as may be agreed upon between the corporations or companies; and any two or more of such corporations or companies may enter into any arangement for their common benefit consistent with and calculated to promote the objects for which they are created. No such lease or purchase shall be perfected until a meet-

ing of the stockholders of each of the companies has been called for that purpose by the directors thereof, on thirty days' notice to each stockholder, at such time and place, and in such manner, as is pro-provided for annual meetings of the companies, and the holders of at least two-thirds of the stock of each company, in person or by proxy, at such meeting, or at any properly adjourned meeting, assent thereto. Provided, that any stockholder who refuses to assent to such lease or sale and signifies the same by notice in writing to the lessee or purchaser within ninety days thereafter, shall be entitled to demand and receive compensation in the manner provided for the compensation of stockholders in sections 3302, 3303 and 3304 of the Revised Statutes, and the said sections are adopted and made to be part of this section. Provided that whenever any such consolidation is made as herein provided, there shall be no increase of the existing rates of fare by reason of such consolidation nor shall any fare be charged upon any of the separate routes so consolidated in excess of the fare charged over such separate routes, prior to the consolidation thereof; and provided that when any such consolidation is made as herein provided, the fare charged for one continuous route or ride over all such consolidated lines shall not exceed the maximum fare charged over any one of said lines prior to such consolidation."

"Section 2505-b. Whenever the lines or authorized lines of road of any street railroad corporations or companies meet or intersect, or whenever any such line of any street railroad corporation or company and that of any inclined plane railway or railroad corporation or company or any railroad operated by electricity may be conveniently connected or be operated to mutual advantage, such corporations or companies, or any two or more of them, are hereby authorized to consolidate themselves into a single corporation, or whenever a line of road of any street railroad company or corporation organized

in this state is made, or is in process of construction, to the boundary line of the state, or to any point either in or out of the state, such corporation or company may consolidate its capital stock with the capital stock of any corporation or company, corporations, or companies, in any adjoining state, the line or lines of whose road or roads have been made, or are in process of construction, to the same point or points, in the same manner and with the same effect as provided for the consolidation of railroad companies in sections 3381 (as amended), 3382, 3383 (as amended), 3384, 3385, 3386, 3387, 3388, 3389, 3390, 3391, 3392 and 9805 of the Revised Statutes, and in any and all acts amendatory and supplementary to said sections and each of them; and the said sections so amended and supplemented are adopted and made to be part of this section."

The foregoing sections are part of the act of May 1, 1891, and were therefore in force at the time of the consolidation of The Cleveland Electric Railway Company in 1893, and at the time of the passage of the ordinance of July 17, 1893. In the same act it was provided by the second section as follows:

"Nothing in this act shall be construed to extend the term of any grant by a municipal corporation, and no such consolidation shall in any way extend or enlarge any of the rights of any of the separate roads so consolidated."

"Sec. 3437. Street railways, with single or double tracks, side-tracks, and turn-outs, may be constructed or extended within or without, or partly within and partly without, any municipal corporation or unincorporated village; and offices, depots and other necessary buildings for such railways may also be constructed."

This section was originally passed February 19, 1870.

"Section 3438. The right so to construct or extend such railway within or beyond the limits of a

municipal corporation can be granted only by the council thereof, by ordinance, and the right to construct such railway within or beyond the limits of an unincorporated village can be granted only by the county commissioners, by order entered on their journal; and after said grant or renewal of any grant shall have been made, whether by general or special ordinance, or by order of the county commissioners, neither the municipal corporation nor the county commissioners shall release the grantee from any obligations or liabilities imposed by the terms of said grant or renewal of a grant during the term for which said grant or renewal shall have been made. Provided, that no authority shall be given by such municipal or county authorities, to occupy the track, whether single or double, or other structure, of any existing street railways for more than one-eighth of the entire distance between the termini of the route, as actually constructed, operated and run over, of the company or individual to whom such grant is made; except, however, in granting permission to extend existing routes in cities of the first, second and third grade of the first class, and first grade, second class, such cities, and the companies owning such route, shall have the same rights and powers they have under the laws and contracts now existing; and that no extension of any street railroad located wholly without any such city, or of any street railroad wherever located, which has been or shall be built in pursuance of a right obtained from any source or authority other than a municipal corporation, shall be made within the limits of such city, except as a new route, and subject to the provisions of sections *two thousand five hundred and one*, and *two thousand five hundred and two.*"

"Section 3439. No such grant shall be made until there is produced to council, or the commissioners, as the case may be, the written consent of the owners of more than one-half of the feet front of the lots and lands abutting on the streets or pub-

lic way, along which it is proposed to construct such railway or extension thereof; and the provisions of sections *two thousand five hundred and one* and of *two thousand five hundred and three* to *two thousand five hundred and five,* inclusive, so far as they are applicable, shall be observed in all respects, whether the railway proposed is an extension of an old or the granting of a new route; provided that this act shall not apply to any county containing a city of the second grade of the second class."

"Section 3441. If the public road, along which the railway is to be constructed, is owned by a person or company, or is within the control or management of the board of public works or other public officer, such person, company, or officer may agree with the person or company constructing the railway as to the terms and conditions upon which the road may be occupied."

"Section 3443. Council or the commissioners, as the case may be, shall have the power to fix the terms and conditions upon which such railways may be constructed, operated, extended and consolidated."

CLAIMS OF THE CLEVELAND ELECTRIC RAILWAY COMPANY.

If counsel for The Cleveland Electric Railway Company urge here the views presented in the court below they will be found to claim:

1. That certain of the Euclid Avenue and Garden Street lines are operated under perpetual grants and that so far as this claim affects the Garden Street line the decree of the court below should have recognized the existence of this claim to perpetual right.

2. That the date of the right to operate the Garden Street line was prolonged to the 13th day of July, 1913, by the ordinance of April 20th, 1891, and certain other ordinances to be read in connection therewith.

3. That the ordinance of February 9th, 1894, creating the Willson Avenue cross-town line by the imposition of a requirement for reciprocal transfers between the Willson Avenue and intersecting lines automatically extended the grants of all such intersecting lines to the dates fixed for the Willson Avenue expiration, namely July 1, 1914.

4. That the growth of the system operated by the complainant has been such that it would inconvenience the complainant and interfere with its method of operation were the original dates of expirations of the several constituent parts of its system to expire at different dates.

It is claimed that council of the City of Cleveland has so far recognized the existence of the complainant system as to lead to the inference that its continued operation as a system must exist in all its parts until the expiration of its longest grant.

These contentions must be examined separately, but it may not be improper briefly to state the general principles of construction applicable to ordinances of municipal corporations exercised under a power delegated by the Legislature of the state for the enfranchisement of private companies with public privileges.

PRINCIPLES OF CONSTRUCTION.

That ordinances of municipal corporations making grants, to private companies for profit of rights in the public streets, constitute contracts and are protected from impairment by the Constitution of the United States is too well settled by the decisions of this Court to justify citation of authority. The sole questions presented here upon such a case as the one at bar are not whether this Court will enjoin the impairment of the contract nor whether an ordinance making a grant of a public right or privilege to a private company is a contract, but are, whether such a contract is within the pow-

ers of the municipal corporations, and second, what is the contract?

The decisions of this Court in the cases of the *City of Cleveland vs. Cleveland City Railway Company*, 194 U. S., 517, and the *City of Cleveland vs. Cleveland Electric Railway Company*, 201 U. S., 529, have definitely settled the first of these questions: It is there said:

> "The statutes show that there was lodged by the Legislature of Ohio in the Municipal Council of Cleveland, comprehensive power to contract with street railway companies in respect to the terms and conditions upon which roads might be constructed, operated, extended and consolidated, the only limitation upon that power being that in case of an extension or consolidation no increase in the rate of fare should be allowed."

It is not contended in this action that the council of the City of Cleveland has in any of the ordinances above referred to, exceeded its statutory powers but it is confidently asserted by the city that its various ordinances do not in express terms confer the rights claimed by The Cleveland Electric Railway Company and that no interpretation of them which either recognizes or confers such rights as are claimed can be made without violence to the language used in the ordinances themselves and without an entire disregard of the intention of the legislative body of the City of Cleveland, as shown in all its dealings with this company and its predecessors in relation to the prolongation of its rights.

> "The words of a private grant are taken most strongly against the grantor though if the meaning cannot be discovered the instrument is void. But this rule is reversed in cases of public grants. They are construed strictly in favor of the government on grounds of public policy. If the meaning of the words be doubtful in a grant designed to be of general benefit to the public they will be taken most

strongly against the grantee and for the government and therefore should not be extended by implication in favor of the former beyond the natural and obvious meaning of the words employed." *2 Lewis' Sutherland Statutory Construction,* Section 548.

The above citation is based upon and supported by the holding of this Court in the case of the *Central Transportation Company vs. The Pullman Palace Car Company,* 139 U. S., 24.

In that case this Court said:

"By a familiar rule every public grant of property or of privileges or franchises if ambiguous is to be construed against the grantee and in favor of the public, because an intention on the part of the government to grant to private persons or to a particular corporation, the property or rights in which the whole public is interested cannot be presumed unless unequivocally expressed or necessarily to be implied in the terms of the grant *and because the grant is supposed to be made at the solicitation of the grantee and to be drawn up by him or his agents and therefore the words used are to be treated as those of the grantee, and this rule of construction is a wholesome safeguard of the interests of the public against any attempt of the grantee by the insertion of ambiguous language to take what could not be obtained in clear and express terms."*

Citing

Charles River Bridge vs. Warren Bridge, 11 Peters, 420;

Dubuque & Pacific R. R. Co., vs. Litchfield, 23 Howard, 66;

Slidell vs. Grandjean, 111 U. S., 412.

The language of Mr. Justice Gray above quoted but states aptly the rule which has been applied generally in American courts, and its endorsement in this Court has been so frequent and unbroken that it has now become as arbi-

trary and uncompromising a presumption of law as the rule in Shelly's case.

Cases stating and applying the rule in the Federal courts are:

Charles River Bridge vs. Warren Bridge, 11 Pet., 420;

Minturn vs. Larue et al., 23 Harvard, 435;

Thomas vs. City of Richmond, 12 Wallace, 353;

City of Detroit vs. Detroit City Ry. Co., 61 Fed., 161;

Citizens Ry. Co. vs. Detroit, 171 U. S., 48;

citing with approval the language of Mr. Justice Jackson in *Grand Rapids Electric Light and Power Company vs. Grand Rapids*, 33 Fed., 659;

Freeport Water Co. Freeport, 180 U. S., 598.

The most recent application of this rule adversely to claims of grant by presumption is in the case of *Water Company vs. Knoxville*, 200 U. S., 22, where this Court says:

> "Although the doctrines which must control in determining the scope of such a grant are clearly settled and are familiar, it may be well to recall the words of some of the adjudged cases. In *Charles River Bridge vs. Warren Bridge*, 11 Pet., 420, 544, 547, 548, the doctrine announced was that government, possessing powers that affect the public interests, and having entered into a contract involving such interests, is not, by means merely of implications or presumptions, to be disarmed of powers necessary to accomplish the objects of its existence; that any ambiguity in the terms of such a contract 'must operate against the adventurers and in favor of the public, and the plaintiffs can claim nothing that is not clearly given by the act'; that 'it can never be assumed that the Government intended to diminish its power of accomplishing the end for which it was

created'; and that those who insist that the Government has surrendered any of its powers or agreed that they may be diminished, must find clear warrant for such a contention before it can be heeded. 'Grants of franchises and special privileges are always to be construed most strongly against the donee, and in favor of the public.' Such were the words of this Court in *Turnpike Co. vs. Illinois*, 96 U. S., 63, 68. The universal rule in doubtful cases —this Court said in *Oregon Railway Co. vs. Oregonian Ry. Co.*, 130 U. S., 1, 26—is that 'the construction shall be against the grantee and in favor of the government.' As late as *Coosaw Mining Co. vs. South Carolina*, 144 U. S., 550, 562, this court said: 'The doctrine is firmly established that only that which is granted in clear and explicit terms passes by a grant of property, franchises or privileges in which the Government or the public has an interest. Statutory grants of that character are to be construed strictly in favor of the public, and whatever is not unequivocally granted is withheld; nothing passes by mere implication. This principle, it has been said, is a wise one, as it serves to defeat any purpose concealed by the skillful use of terms to accomplish something not apparent on the face of the act, and thus sanctions only open dealing with legislative bodies.' *Slidell vs. Grandjean*, 111 U. S., 412, 438. We have never departed from or modified these principles, but have reaffirmed them in many cases.

"It is true that the cases to which we have referred involved in the main the construction of legislative enactments. But the principles they announce apply with full force to ordinances and contracts by municipal corporations in respect of matters that concern the public. The authorities are all agreed that a municipal corporation, when exerting its functions for the general good, is not to be shorn of its powers by mere implication. If by contract or otherwise it may, in particular circumstances, restrict

the exercise of its public powers, the intention to do so must be manifested by words so clear as not to admit of two different or inconsistent meanings."

So far, then, as this Court is concerned, the rule of strict construction applies with unimpaired force alike to legislative enactments properly so-called, and to contracts affecting the public interest made by municipal corporations.

The text writers recognize the especial force of this rule as applying to street railway grants. Thus, *Booth on Street Railways*, says, in Section 33:

> "In accordance with this principle, words and phrases in statutes conferring franchises on corporations must receive that interpretation which is most favorable to the public."

And in Section 43 of the same book he says:

> "As repeals by implication are not favored and the rule of strict construction against the grantee is strictly applied to the franchise of private corporations, a corporation will not be permitted to enjoy franchises beyond the expiration of its original charter unless that intention has been clearly expressed by the granting power. *Amendatory and supplementary acts or ordinances* will not have that effect unless the intention to renew be expressed in apt terms, and any ambiguity in the language used will be resolved in favor of the state."

Citing among others the case of *New Orleans and Carrollton R. R. Co. vs. New Orleans*, 34 La. Ann., 429.

Judge Cooley, in his work on *Constitutional Limitations*, page 488 and the following, discusses this subject with a careful analysis of the authorities. His conclusion is:

> "Such grants, however, which confer upon a few persons what cannot be shared by the many, and which though supposed to be made on public grounds are nevertheless frequently of great value to the corporators, and therefore sought with avidity, are never

to be extended by construction beyond the plain terms in which they are conferred. No rule is better settled than that charters of incorporation are to be construed strictly against the corporators. The just presumption in every such case is that the state has granted in express terms what it designed to grant at all. 'When a state,' says the Supreme Court of Pennsylvania, 'means to clothe a corporate body with a portion of her own sovereignty, and to disarm herself to that extent of the power which belongs to her, it is so easy to say so that we will never believe it to me meant when it is not said. * * * In the construction of a charter to be in doubt is to be resolved, and every resolution which springs from doubt is against the corporation. If the usefulness of the company would be increased by extending (its privileges), let the legislature see to it, and let it be remembered that nothing but plain English words will do it.' This is sound doctrine, and should be vigilantly observed and enforced."

In Ohio this rule has been recognized and applied from the earliest history of the state. In the case of *Bank vs. Toledo*, 1 O. S., 622, it is said on page 636:

"If there be anything well settled in the law relating to corporations, it is that their charters being grants of power or authority in derogation of the natural rights and equality of men, must be construed favorable to the public, and strictly against the corporation in whose favor nothing can be claimed by implication."

Straus vs. Eagle Insurance Company, 5 O. S., 59;
State vs. Vanderbilt, 37 O. S., 590-640;
Zanesville vs. Gas Light Company, 47 O. S., 31;
State vs. Eagle Insurance Company, 50 O. S., 252-268.

From the foregoing it sufficiently appears that in Ohio, and generally in the United States, the courts construing statutes and municipal ordinances conferring public rights upon private persons, resolve every doubt in favor of the public and

against the claim made on behalf of the grantee, and as this has been the rule of construction from the earliest times, a corollary derived from it imposes upon private corporations seeking grants of public rights to see to it at their peril that the thing which they desire to secure is expressed in plain and unequivocal language in the act of the public body. During the entire time that all of the ordinances here under consideration were being passed and accepted, the law holds The Cleveland Electric Railway Company and its predecessors to have been preparing the language of the grants to be enacted in their favor, and charges them with having written into those grants, in plain and unmistakable terms, all that they were then seeking to secure, with full knowledge that they would be estopped by the operation of this conclusive presumption from subsequently claiming any enlargement of the things specifically stated to be granted by implication or inference, or from any contention that the nature of their enterprise had grown to be such that its convenient operation would be furthered and benefited by implied extensions of the language originally used.

The force of this suggestion is particularly applicable to the contention of the complainant as to the growth of its system, and the relation of the tracks in controversy here to the operation of that system. For the present, however, we turn to an examination of the claims of the complainant in the order stated.

CLAIM AS TO PERPETUAL RIGHTS.

This claim proceeds upon the two-fold theory, first, that some of the original grants of The East Cleveland Railroad Company, both upon its Euclid Avenue line and its Garden Street line, contained no specific limitation of time; and second, that while others of the early grants to The East Cleveland Railroad Company did contain specific limitations

of time, yet that prior to the act of May 14, 1878, the legislature of the State had not imposed any limitation upon the power of municipalities with respect to the time for which a right to use the streets for street railroad purposes could be granted, and that attempts on the part of municipalities to impose such limitations in the absence of express statutory authority were *ultra vires.*

It is true that the act of May 14, 1878, contains the first prohibition upon municipal authorities as to the length of grants authorized to be made by them, limiting such grants to the maximum period of twenty-five years, but this Court has held that the councils of municipalities in Ohio have comprehensive power to make contracts with street railroad companies except in those particulars in which a specific limitation is imposed by statute, (*State vs. The Cleveland City Railway Company*, 194 U. S., 517) and this holding is in entire accord both with the theory of the legislation of Ohio on the subject of street railroads, and with the interpretation which has been put upon that legislation by the courts. In the case of *Louisville Trust Company vs. City of Cincinnati*, 76 Fed. Rep., 296, the Circuit Court of Appeals for the sixth circuit, was called upon to examine the street railroad legislation of Ohio. In that case it was contended that because the State had imposed no limitation upon the duration of the corporate franchises of the company, therefore the term for which it held street grants was likewise intended to be unlimited. The Court says that this argument is illogical:

> "It loses sight of the distinction between those franchises conferred by the state and obtained by organization under the state law, and those property or contractual franchises not granted by the state and not inherent in the corporation as such, but which come from a local authority having the right to grant the right to occupy a public highway. We do not mean to intimate that a municipal or local authority is the only source from which such an easement could come

in Ohio. The legislative history of the state is such, however, as to indicate that the settled public policy of the state is not to confer such easements, but to refer all such companies to the municipality upon whose streets or highways they wish to exercise the franchises conferred by the state for the requisite street easements, upon terms and conditions to be agreed upon between such companies and local government. When, therefore, we come to construe an Ohio statute providing for the organization of either ordinary railway or street car companies, we may well do so with the expectation that this settled policy has not been departed from, and that the state has stopped with the grant of the usual and necessary corporate franchises proper, by which it has been endowed with power to operate its roads for tolls, when it shall have acquired from the local authority the equally essential right of occupying with its tracks the particular streets upon which it proposes to conduct its business. That the state did not undertake, in the general incorporation act of May 1, 1852, to confer upon any of the class of corporations therein provided for the power to enter upon and occupy with its tracks the public streets of any city or village, or the public highway of any township or county, before obtaining the consent of the local authority concerned, is too clear for discussion. Section 12 of that act expressly provided how such street or highway rights might be obtained, that section being in these words:"

The section is here omitted. It contains the assertion of the right of a municipal authority to impose terms and conditions upon such grants. The Circuit Court of Appeals then proceeds to say:

> "The right of the local authority to impose terms and conditions is clearly conferred, and no such corporation can impose itself upon the public streets or highways unless it enter into an agreement touching the occupancy of such streets, or resorts to the

right of condemnation in default of an agreement. This right to impose terms and conditions most obviously implies the right to agree upon the duration of such occupancy."

So far, then, as those ordinances of the City of Cleveland are concerned, which though passed prior to the 14th day of May, 1878, contain express limitations as to the duration of the grants made, it is plain that the legislature had, in accordance with the general legislative policy of the State previously and subsequently pursued, endowed the municipal council with full and comprehensive power to enter into contracts with private persons or corporations for the occupation of its streets by street railroads. These powers were as large as the subject matter required, and unlimited except by limitations contained in the statutes themselves. It cannot be supposed that the legislature intended to say, in view of the language it did use, that a municipal council was disabled from making a grant unless it made one in perpetuity, or that attempts by a municipal council to safeguard public interest as it might appear in view of future considerations, were prohibited. The general power was granted. The councils were not told either that it might be exercised by a grant for years or a grant in perpetuity. It was such a power as in its nature was susceptible of continuing, periodical and repeated exercise.

It would hardly be claimed, if the state statute authorized a municipal corporation to make a contract to light the streets of a city, and contained no maximum period for such contract, that a contract made in pursuance of that power for the lighting of the streets of the city with coal oil lamps, either constituted a perpetual obligation forever foreclosing the city from availing itself of improved devices in public lighting, or even a perpetual obligation upon the municipal corporation to deal with that particular contractor, and the situation here affords an exact parallel, for all of the public grants

as to which this contention is made related to the operation of horse railroads, and not to such modern electrical devices as are now operated by the complainant company. If these contracts are perpetual obligations as to their duration, they are likewise perpetual as to the rights conferred by them, and under them the complainant company, upon some streets in the City of Cleveland, would now have the right, and only the right, to operate horse cars of the kind in use prior to 1878 upon single tracks for parts of extensive lines in other parts operated on double tracks by electricity. The fact is that The Cleveland Electric Railway Company does not operate under any of the grants made prior to 1878, but under authority of ordinances made long subsequent thereto, in complete substitution for all of the earlier grants. The suggestions here made, however, seem important for the purpose of showing that the claimed perpetual right must be limited to the perpetual right to do the thing originally authorized, and when so limited, the claim becomes absurd.

Enough has perhaps been said upon those ordinances of the City of Cleveland and of the Village of East Cleveland passed prior to 1878, which did contain specific limitations of time. As to those which contain no such specific limitation, it is to be observed that they were all resolutions or ordinances of the Village of East Cleveland, and all relate to the construction of tracks as a part of either the Euclid Avenue line or the Garden Street line of The East Cleveland Railroad Company.

The original resolution of the City of Cleveland of November 1, 1859 (Record, page 182), under which the first track construction of The East Cleveland Railroad Company was prosecuted, expressly limited the right granted to expire at the end of twenty years from the 20th day of September, 1859. The several resolutions of June 5, 1860, July 3, 1860, and July 31, 1860 (Record, pages 183 to 186), authorize additional tracks subject to the terms of the general street rail-

way ordinance passed September 20, 1859, of which Section 13 provided:

> "No contract under the provisions of this ordinance shall be made for a longer period than twenty years from the date of the passage of this ordinance;" (Record, page 252.)

and from the date of the passage of the ordinance of the 20th of September, 1859, continuously forward to 1878, there was always in force a general ordinance of the City of Cleveland limiting the time of all street railway grants not otherwise limited to the maximum of twenty years, which provision was a general underlying condition of all street railroad contracts made.

On April 11, 1862, The East Cleveland Railroad Company applied to the trustees of East Cleveland Township for authority to extend the Euclid Avenue line from the limits of the City of Cleveland at Willson Avenue, to Doan's Corners. On August 9, 1862, the township trustees granted the application and authorized the construction of a single track horse railway over the route applied for. The written permit contains no time limitation. (Record, page 187.) On August 2, 1870, the council of the Village of East Cleveland, then an incorporated village under the laws of the State, by ordinance authorized the making of a contract with The East Cleveland Railroad Company, permitting it to remove its tracks to the center of Euclid Avenue, and to operate it during the continuance of the company's corporate existence. (Record, page 193.) The contract made pursuant to this ordinance (Record, page 194), recognizes the right granted by the ordinance, but deals chiefly with paving and maintenance of the street and regulation of fares.

By an ordinance passed October 7, 1872, the council of the Village of East Cleveland granted certain individuals the right to construct a railroad in Euclid Avenue easterly from Fairmount Street (Doan's Corners) to the easterly

limits of the village. This grant likewise was for a single track horse railroad, and subsequently became the property of The East Cleveland Railroad Company. This ordinance contained no limitation of time. All of the foregoing resolutions and ordinances dealt with properties of the Euclid Avenue line of The East Cleveland Railroad Company, and had no relation to the Garden Street line. They authorized, in effect, the removal of the track of The East Cleveland Railroad Company's Euclid Avenue line, from the side to the center of the street, and its maintenance as a single track horse railroad from Willson Avenue beyond Fairmount Street to the easterly limits of the Village of East Cleveland.

The ordinances relating to the Garden Street line important in this connection ar[illegible]nance of the Village of East Cleveland of March 30, [illegible]uthorizing the construction of a branch railroad on Ga[illegible]n and other streets in the Village, with subsequent preambles and resolution (Record page 189) containing a specific limitation of twenty years upon the grant made; a resolution of March 25, 1873 (Record page 200), passed by the Council of the City of Cleveland, permitting the laying of a second or double track in Garden Street between Brownell Street and Willson Avenue, without specific limitation of time, but containing this language:

> "Upon condition * * * that they comply in every respect with all ordinances of the city now in force or which may hereafter be enacted for the government and regulation of street railroads;"

and an ordinance of the City of Cleveland, passed May 23, 1876, authorizing an extension of the Garden Street line and limiting the extension so made, to expire twenty years from the said 23rd day of May, 1876, and requiring it to be operated with the Garden Street branch and the main line (Record page 202). These ordinances, with the original Garden Street resolution of the City of Cleveland (Record page 188), which contains an express limitation for twenty years, are all

of the legislation prior to 1878 affecting the Garden Street line. From a consideration of them it appears that so far as the City of Cleveland is concerned, its legislation either contains specific limitations, or in the one instance where such limitation was not contained, the grant was for a second track in Garden Street, between Brownell and Willson, subject to all existing general street railroad ordinances, among which was the provision of the general ordinance of September 20, 1859, limiting all street railroad grants to twenty years, and in the Village of East Cleveland, the original granting ordinance, with the subsequent preamble and resolution, likewise contained a specific date of expiration. Unless, therefore, the Garden Street line being owned by the same company that owned the Euclid Avenue line, was so far a part of the Euclid Avenue line as to be affected by rights in perpetuity existing in behalf of the Euclid Avenue line, there is no basis for contending that any right in Garden Street was unlimited.

The conclusive answer, however, to the claims of The Cleveland Electric Railway Company in this behalf, is as suggested above, the substitution of later grants with fixed and definite periods of expiration for the earlier grants as to which a limitation of time was either uncertain or lacking. Repeatedly as to the Euclid Avenue line, The East Cleveland Railroad Company and its successor, The Cleveland Electric Railway Company, accepted ordinances with definite dates of expiration. One instance will suffice: on the 13th day of July, 1888 (Record page 218), the Council of the City of Cleveland passed an ordinance granting to The East Cleveland Railroad Company the right to construct and operate an electric street railway on Euclid and Cedar Avenues. By the terms of this ordinance the old animal power railroads previously operated by The East Cleveland Railroad Company in Euclid Avenue were substituted alike in motive power, mode of operation, reciprocal obligations between the contracting parties and duration of rights. It is expressly stated that the rights therein

granted shall continue for the period of twenty years from the date of that ordinance, and on the 17th day of July following, The East Cleveland Railroad Company in writing accepted the permission and privileges granted by the ordinance of July 14, and agreed to abide by the provisions and conditions therein contained.

With regard to the Garden Street line a similar situation existed, whatever may have been the character and duration of the rights of the company prior to the 22nd day of March, 1880, on that day the Council of the City of Cleveland passed an ordinance (Record page 208), permitting The East Cleveland Railroad Company to extend the Garden Street branch, and to equip and operate said extension and its Garden Street branch for the period of twenty-five years from and after the date of the passage of the ordinance.

We have in these two instances typical cases for the application of the doctrine announced by this Court in the case of the *City of Cleveland vs. The Cleveland City Railway Company*, 194 U. S., 517. In that case as the Court will recall ordinances had been passed in the year 1879 granting a renewal of franchise to The Kinsman Street Railroad Company, in which the right was reserved to the city subsequently to increase or diminish the rate of fare therein authorized to be charged. By subsequent ordinance, extensions of the Kinsman Street railroad were authorized, and its consolidation with The West Side Street Railroad Company was approved and authorized in an ordinance of February 16, 1885, which fixed the terms and conditions upon which The West Side Street Railroad Company and The Woodland Avenue Street Railway Company, successor to The Kinsman Street Railroad Company, and the tracks of those companies, might be consolidated. This latter ordinance of February 16, 1885, dealt specifically with the question of the rate of fare to be charged upon the lines of the consolidated company, and this Court said:

> "In reason the conclusion that contracts were engendered would seem to result from the fact that the provisions as to rates of fare were fixed in ordinances for a stated time, and no reservation was made of the right to alter; that by those ordinances existing rights of the corporations were surrendered, benefits were conferred upon the public, and obligations were imposed upon the corporations to continue those benefits during the stipulated time;"

the theory of the Court being plainly that where a contract is made between a municipal corporation and a street railroad company dealing with rates of fare, duration of contract or any other detail, such contract will be deemed in substitution for earlier contracts upon the same matters, and that by the acceptance of the subsequent contract, both parties surrender their right to assert claims, based upon provisions of earlier contracts, inconsistent with the provisions of the latest contract. Whatever may have been the duration of grants for various portions of the Garden Street line of The East Cleveland Railroad prior to March 22, 1880, it is certain that subsequent to that date all outstanding claims and rights were merged in the ordinances then passed; for the parties were competent to deal with the subject matter; they dealt plainly, explicitly and definitely; the one party fixed a date of expiration, and the other accepted and acquiesced therein. And the same is true of the Euclid Avenue line after the passage of the electricity ordinance of July 13, 1888.

The two cases cited in the court below in support of the contention as to grants in perpetuity were *Citizens Railroad Company vs. City Railway Company*, 64 Fed., 647, and the same case, 166 U. S., 557, and the Ohio case of *State ex rel. Taylor vs. Columbus Railway Company*, 24 O. C. C., 609.

In the case of *Citizens Railroad Company vs. City Railway Company*, above cited, the situation was that a general act of the legislature of Indiana authorized the creation of

street railway companies with perpetual corporate existence, and required that before any work was done by such company in the construction of a street railroad, the consent of the common council of the city in which the tracks were to be laid was to be obtained. The City of Indianapolis, in 1864, passed an ordinance authorizing The Citizens Street Railroad Company to lay tracks upon designated streets, and provided that the right to operate the railroad should extend for the period of thirty years. In 1880 the council of Indianapolis amended the original grant so as to read thirty-seven years instead of thirty, and in 1893 the council claimed that the rights of the company would expire in thirty years from 1864, granting to another company called The City Railway Company, the right to lay tracks in a number of the streets then occupied by The Citizens Street Railroad Company. A bill in equity was filed by The Citizens Railroad Company against The City Railway Company, to enjoin it from interrupting or disturbing the Railroad Company in the maintenance and operation of its system, alleging that the latest action of the council sought to impair the contract between the company and the city. In the Circuit Court two judges sat, and it was held that the grant for the period of thirty-seven years was valid, so that at the time the ordinance of 1893 was passed, the city was without right to interfere wih the contract rights of the company. Woods, Circuit Judge, further held that the city had no power, when it gave its original consent in 1864, to limit the time during which the right should be exercised, and that therefore the right was perpetual. From this latter conclusion Judge Baker dissented. The dissenting opinion of Judge Baker points out the distinction drawn by Judge Lurton, in the case of *The Louisville Trust Company vs. City of Cincinnati*, 76 Fed. Rep., 296, between the franchise to be a corporation which is derived by the company from its charter, and the contractual right to occupy public property subsequently acquired by such a company from a municipal corporation. Judge Baker remarks:

> "The right to occupy and use the streets of a city for railroad purposes is a franchise, and is wholly distinct from a franchise to be a corporation, which is derived directly from the state. The latter franchise cannot be sold or conveyed unless express statutory authority is granted for that purpose. The franchise to use the streets for railroad purposes, the right of way on which to build and operate a railroad for profit, is a subject of sale and conveyance.
>
> *Railroad Company vs. Delamore*, 114 U. S., 501."

The case subsequently came in this Court on appeal, and it was held that the circumstances connected with the passage of the amended ordinance of April 7, 1880, were such as to estop the city from denying that the charter was extended to thirty-seven years, but this Court expressly refrained from expressing any opinion as to whether the franchise was perpetual. So that the decree entered by this Court was exactly such a decree as was indicated by Judge Baker in his dissenting opinion in the court below.

The other case referred to, *State ex rel. Taylor vs. Columbus Railway Company*, was tried in the Circuit Court of Franklin County in 1903. The action was in the form of *quo warranto*, to test the right of the railway company to occupy the streets of the City of Columbus, and by answer it was asserted that various grants of rights, franchises and easements made by the state, the City of Columbus and the Board of County Commissioners of Franklin County had been accepted by the companies to which they were made, and large expenditure made under them. Replying to this the plaintiff alleged that the grants were not by their terms in perpetuity, and that if the grants were by their terms intended to be in perpetuity, they were void. An agreed statement of facts was filed which the court said seemed to be an agreement that perpetual franchises in the streets other than Friend Street were granted if

it was within the power of the city to make or authorize a grant of such franchise, and to raise only the question of the existence of the power. The court further says:

> "It appears that the franchises in question were granted after the passage of the first street railway act in 1861, and before the passage of the act of 1878 limiting to twenty-five years the grant of permission to use a street, and that the ordinances are silent as to time, or provide that they shall continue in force during the term of the charter of said company."

On this state of facts it was held that the

> "right to construct and operate a street railroad in streets of the city prior to the act of May 14, 1878, was a franchise or privilege granted by the city upon condition that the city consent to its exercise; that such consent given prior to the act of 1878 without any limitation of time, or to a corporation with succession during the term of its charter, is revocable only by legislative authority. Further, that the franchise or privilege to construct and operate a street railway granted and consented to prior to the act of 1878 without limitation of time is perpetual but subject to be determined by the General Assembly."

A careful examination of the case will show that it does not support the contention made for it by the complainant. As pointed out by Judge Tayler in the court below:

> "This case does not hold that prior to the act of 1878 the council of a municipal corporation was without power to impose a limitation of time on a street railroad franchise. It did hold, and does hold, that until the statute imposed the twenty-five year limitation on the power of the council, a franchise grant without limitation was perpetual in so far as the power of the council existed to terminate it."

And as further pointed out by Judge Tayler, the opinion of the Circuit Court resists the contention there made similar to

the one made here, Judge Tayler concluding:

> "It therefore appears to have been recognized and held in this case that if prior to the act of 1878 the council had seen fit to impose a time limitation on the franchise, such limitation would have been valid."

The most, therefore, that can be contended from this case is that upon a confused record, where the court was obliged to complain in its opinion that it could not come at the ordinances referred to by counsel in their arguments, it was held that a grant prior to 1878 containing no limitation and not surrendered by the acceptance of the grant made subsequent to that time containing a specific limitation, was in perpetuity —a situation so remote from the one here presented as to afford no parallel.

In the court below, the city urged upon the attention of the court the record in the case of *State ex rel. Hadden vs. East Cleveland Railroad Company*, 6 O. C. C., 318, as adjudicating the claim of a perpetual right adversely to The Cleveland Electric Railway Company. This Court has twice examined the case of *State ex rel. Hadden vs. East Cleveland Railroad Company*, and will recall that it was an action in *quo warranto*, brought by the prosecuting attorney against The East Cleveland Railroad Company to oust it from exercising the privilege and right of maintaining a street railway in Garden Street, between Brownell Street on the west, and Willson Avenue on the east. It was asserted as a ground for this action that the ordinance of January 14, 1868, conferred upon The East Cleveland Railroad Company the right to operate its track for the period of twenty years from that date, and that on the 22nd day of March, A. D. 1880, the council had passed an ordinance authorizing the extension of the Garden Street line, and renewing the grant for the whole line to the 22nd day of March, 1905. The action was brought, it will be observed, subsequent to the expiration of the twenty

years from the 14th day of January, 1868, and the contention was that it was incompetent for the council of the City of Cleveland to renew the grant prior to its expiration, the language of the statue authorizing renewals being that the council may renew a grant at its expiration. It was therefore contended that the ordinance of the 22nd day of March, 1880, was invalid. The Circuit Court sustained a demurrer to this petition, expressing as its opinion that a grant might be renewed prior to its expiration; that the grant to The East Cleveland Railroad Company for its Garden Street line had been so renewed, so holding that The East Cleveland Railroad's Garden Street line had been prolonged as to the duration of its grant to the 22nd day of March, 1905. Judge Tayler thought that there was force in the contention made by the city with regard to the effect of this case, but that it was not convincing, and summed up by saying:

> "The conclusion, therefore, to which I have come in respect to this claim of perpetual or unlimited franchise, is that prior to the act of 1878 the council had the right to limit the term of the franchise, and that as to any franchise granted for an unlimited period, the rights of the complainant have been wiped out by its subsequent contracts entered into with the city,"

a conclusion, we respectfully submit, in entire harmony with all the authorities, and following the decisions of this Court in the cases of *The City of Cleveland vs. Cleveland City Railway Company*, above cited.

THE CLAIM THAT THE RIGHT TO OPERATE THE GARDEN STREET LINE WAS PROLONGED TO JULY 13, 1913.

This contention derives whatever strength it has from the theory that the Euclid Avenue line and the Garden Street line of The East Cleveland Railroad Company were so far parts of the same line that the ultimate fixing of the expiration

of the grant for the Euclid Avenue line at July 13, 1913, inevitably carried the Garden Street line with it to that date—a theory wholly inconsistent with the facts, when it is recalled, as above recited, that at the time the first Garden Street grant was made by the City of Cleveland, January 14, 1868, there was no statute which authorized the extension of an existing street railroad. Moreover, no attempt was made by the City of Cleveland to extend an existing street railroad. The resolution of January 14, 1868, recites (Record page 188) that advertisement for bids had been made for the right to carry passengers upon the proposed Garden Street railroad, and that the grant was made to The East Cleveland Railroad Company because it was the lowest and best bidder. That was the statutory requirement. If any other railroad company or individual had been a better or lower bidder, pursuant to that advertisement, the council would have made the grant to it, and if the grant had been made to another than The East Cleveland Railroad Company, and had been kept distinct in ownership from the Euclid Avenue line throughout its subsequent history, there could manifestly have been no contention that there was any such relationship between them as to endow them of necessity with a common length of life. Throughout the entire legislative history of the City of Cleveland, from the time that the Garden Street line was first authorized, to the present, there is a complete preservation of the separate and distinct identity of these two lines of railroad Both the city and the owning and operating company have continued from the beginning to treat these lines as separate and distinct. This appears, among others, in the following ways:

1. In the petition of The East Cleveland Railroad Company to the council of the City of Cleveland (Record page 203), wherein *a renewal of the Euclid Avenue line* is asked.

2. In the ordinance of September 15, 1879 (Record page 204), granting a renewal of franchise to The East Cleve-

land Railroad Company to construct, maintain and operate its railroad in and through *certain streets* of the City of Cleveland, which streets appear in the body of the ordinance to be those which comprise *the Euclid Avenue line alone.*

3. The ordinance of March 22, 1880 (Record page 208), permitting an extension of the Garden Street branch, and authorizing the operation of the extension and the Garden Street branch as entirely distinguished and separate from the Euclid Avenue line, for the period of twenty-five years from that date.

4. The ordinance of April 4, 1883 (Record page 209), authorizing the operation of a double track in Euclid Avenue from the west line of Willson Avenue to Fairmount Street, which in express terms grants the right to operate the Euclid Avenue line east of Willson to the 20th day of September, 1904, and recites that that is the day to which the right to operate the Euclid line west of Willson exists, and this ordinance was subsequent to the time when the right to operate the Garden Street line had been prolonged to March 22, 1905.

5. The ordinance of March 15, 1886 (Record page 212), authorizing The East Cleveland Railroad Company to extend and operate its double track in Euclid Avenue east of Fairmount Street, again limiting the extension to expire on the 20th day of September, 1904, with the rest of the Euclid grant.

6. The ordinance of July 16, 1886 (Record page 214), granting to The East Cleveland Railroad Company and The Brooklyn Street Railroad Company authority to extend their tracks in the central portion of the town, and limiting the grant to expire as to each company with its main grant respectively.

7. The ordinance of July 18, 1887, in which authority is given to The East Cleveland Railroad Company to extend the Garden Street branch and to operate the extension in con-

nection with both the Garden Street branch and the main line, but limiting the extension to expire with the grant for the "Garden Street main line" as distinguished from the "Euclid Avenue line." (Record page 217.)

8. The ordinance of July 13, 1888 (Record page 219), authorizing the installation of electric traction on the Euclid and Cedar lines, granting a specific renewal for twenty-five years from that date in the following language:

> "Shall be in force for the period of twenty-five years from and after the date of the passage of this ordinance *upon its main and Cedar Avenue lines*"

excluding any reference to the Garden Street line.

9. The ordinance of March 10, 1890, authorizing the substitution of electric motive power on the Garden Street line (Record page 225), the grant being

> "To operate by electric power the said Garden Street branch during the term of its *present grant for said Garden Street branch.*"

10. The ordinance of April 12, 1888 (Record page 269), authorizing The East Cleveland Railroad Company to extend the Euclid Avenue line through Case, Perkins, Willson, Hough, Dunham and Wade Park, and to operate the extension by electricity during the term of

> "the present grant for said East Cleveland Railroad Company's main line."

The only two ordinances of the City of Cleveland which appear in any way inconsistent with this otherwise uniform practice of preserving a complete separation between the Euclid and Garden Street lines owned by The East Cleveland Railroad Company, are the ordinances of March 30th, 1891 (Record page 227), which authorizes The East Cleveland Railroad Company to construct a second or additional track upon Central Avenue from the east line of Willson Avenue to the right-of-way of the Cleveland and Pittsburgh Railroad

Company, and provides:

> "The right herein granted shall be valid until the expiration of the grants for the said company's main line;"

and the ordinance passed less than a month later, April 20, 1891 (Record page 228), authorizing The East Cleveland Railroad Company to lay an additional or second track in Quincy Street, and saying:

> "The right herein granted shall be valid until the expiration of the grants for said company's tracks on said Quincy Street, east of Lincoln Avenue, to-wit July 13, 1913."

As to the first of these ordinances, it is plain that the council meant the Garden Street line. It had previously used that term in the ordinance of June 18, 1887 (Record page 217), and the thing which the council was doing was to authorize the laying of a second or additional track to facilitate the operation of tracks already laid. It was immediately merged in and became part of the railroad at that point, and what the council plainly had in its mind was the main line which was then being extended. As to the ordinance of April 20, 1891, Judge Tayler said (Record page 81):

> "Respecting the ordinance of April 20, 1891, granting to The East Cleveland Railroad Company permission to lay an additional, or second, track in Quincy Street, from New Street to Woodland Hills Avenue, and wherein it is provided that the right therein granted shall be 'valid until the expiration of the grant for said company's tracks in Quincy Street east of Lincoln Avenue, to-wit, July 13, 1913,' the conclusive answer is that the grant for the company's tracks in Quincy Street east of Lincoln Avenue did not, and would not, expire July 13, 1913. The ordinance did not state the fact. It is true that the original right in Quincy Street east of Lincoln Avenue was, by the terms of the ordinance granting it, to expire with the main line franchise. If by 'main line' was meant the Euclid Avenue line, then

it would expire in 1904. Subsequently, that main line franchise was extended to July 13, 1913, and doubtless the person who drafted this ordinance assumed that, as the main line franchise had been extended to July, 1913, the effect of that extension was to extend the time of the rights in Quincy Street east of Lincoln Avenue to that date. But the fatal defect in that process of reasoning, and the fatal objection to the date inserted in the ordinance of April 20, 1890, is that, after the passage of the ordinance for the Quincy Street extension east of Lincoln Avenue, and before the passage of the ordinance extending the main line to 1913, to-wit, on March 10, 1890, the council passed an ordinance authorizing The East Cleveland Railroad Company to substitute electrical motive power for horse power over its Garden Street line to Woodland Hills Avenue, and provided that the right to operate the Garden Street branch should continue during the term of the company's then present grant for the operation of the tracks upon the Garden Street branch.

Nor, the Garden Street franchise, at the time of the passage of the ordinance of March 10, 1890, was to expire on the twenty-second day of March, 1905, and the period of expiration of the right to operate an extension east of Lincoln Avenue on Quincy Street, if it could be different from the life of the main stem, if it could be made to co-exist with the franchise on the Euclid Avenue line, was wholly wiped out by this new ordinance authorizing the use of electricity, and changed the termination of its franchise to accord with the franchise for the Garden Street line, viz., March 22, 1905."

The ordinance to which Judge Tayler refers appears in the record at page 225. Nothing can be added to the conclusiveness of the observations made by Judge Tayler in reply to this contention. It is manifest that not only have both the Council of the City of Cleveland and the owning company, preserved the separate and distinct identity of the Garden Street

line from the earliest times, but that the language and the plain intent of the ordinances passed by the Council and accepted by the company are susceptible of no other interpretation than that the Garden Street line, in its entirety, and as a unit, was limited to expire on the 22nd day of March, 1905, and that all conflicting and outstanding claims were surrendered by the company and merged in its final contract and agreement.

It is possible that something may be contended in this connection for the resolution of the 29th day of May, 1893 (Record page 23). This is a resolution assenting to the consolidation by which The Cleveland Electric Railway Company was originally formed. We reserve our analysis of this resolution until we come to discuss the claim made as to the growth and creation of the system by the complainant, but here point out that this resolution was passed not as an attempt on the part of the Council to force any concessions from the newly organized consolidated company, nor even pursuant to any application from it for any enlargement of its privileges. On the 22nd day of May, 1893, the new company addressed a communication to the Council, informing it that the two consolidations by which the new company was formed, had already taken place; that they were made under advice of counsel, and were believed in all respects to be legal and valid; that the only purpose of sending any communication was to quiet any apprehension which might exist in the public mind as to the intention of the company, and that it therefore desired to enter a distinct and emphatic disclaimer that the company sought to enjoy, or claimed to have any greater rights by reason of the consolidation than originally inhered in the constituent companies. The communication further informs the Council that the consolidated company is already established and has in practice a system of transfers, and that it proposes to establish through lines for the better accommodation of its patrons, all of which, the Court will observe, is a

mere notice to the Council of a completed transaction. The consolidation had taken place, the transfers were then in use, through lines were in contemplation, and the company predicated no request for prolonged grants upon these acts on its part. The subsequent resolution of the Council is very brief, and simply states what the law already required as to rates of fare upon extended and consolidated lines, and what the company had already informed the Council that it had voluntarily done by way of transfers. The subject matter of the life of the grants of the constituent companies was not referred to in either the communication to the Council, or in the Council's resolution, but on the contrary, the company informed the Council that it claimed no prolongation of any grant by its consolidation, and by not asking for any such prolongation, it acquiesced in the treatment of that subject matter as one not then necessary to be acted upon.

It will be recalled that the lines constituting the consolidated company were operated under grants expiring variously from 1908 to 1914. This fact was of course known to the company, and it would seem that question had arisen—perhaps public apprehension as to whether the voluntary consolidation of these companies might not in some manner enlarge their rights. The action of the company in disclaiming any such purpose disarmed the public and the Council, and this communication, together with the subsequent acceptance by the company of the resolution of May 29, 1893, constitute an agreement between the Council and the company that at that time the company was receiving no addition to the rights previously obtained by the constituent companies of which it was composed.

The foregoing argument is addressed in detail to the interpretation of the various ordinances passed by the Council of the City of Cleveland, out of which it is contended by the complainant that the extension of the Garden Street line to

July 13, 1913, is to be inferred and the conclusion reached is that no such inference is justified, either by the language used to the Council or by the intention to be gathered from the aggregate effect of its acts. Upon this whole subject in our opinion nothing can be said that will add to the conclusiveness of the reasoning of Judge Tayler in the court below. After having disposed of these ordinances in detail the Trial Judge proceeded to inquire into the theory upon which extensions are authorized to be made and the nature and character of an extension when made. No useful purpose can be served by a re-statement here of the vigorous and convincing argument contained in the opinion on this question. We respectfully ask the Court to consider that opinion as a part of this brief. Record pages 76 to 87 and especially beginning at page 80.

The conclusions reached by Judge Tayler are that the Statutes of Ohio, at the time the Garden Street branch was originally constructed, contained no authority, to municipal councils to authorize extensions, and since the legislative proceedings incident to the inauguration of that enterprise show it to have been an original and independent street railroad grant, the Garden Street line cannot be considered in its origin an extension of the Euclid Avenue line of The East Cleveland Railroad Company; that the power to make extensions conferred in its original form by the act of May 7th, 1869, authorizes the extension of an existing track as a mere incident to and enlargement of an original enterprise and that the act does not constitute a donation of power to be used as an alternative method of establishing an independent street railroad without the formalities and safeguards provided by Sections 2501 and 2502 of the Revised Statutes; that such an extension being a mere incident of an existing street railroad must of necessity have the same life as the thing to which it is appurtenant and that whatever attempts municipal councils may have made to limit the life of an extension to expire a different date from that of the line extended, such an effort would

be vain; that, therefore, the Garden Street line having been in itself originally an independent, separate and distinct railroad, the extensions to it become a part of it, limited to expire of necessity at the same time and that the renewal ordinance of March 22, 1880, necessarily covered both the original Garden Street grant and all its extensions and was inconsistent with any claim that portions of that grant, granted by way of extension should have a different date of expiration.

THE ORDINANCE OF FEBRUARY 9TH, 1894, CREATING THE WILLSON AVENUE CROSS-TOWN LINE.

The contentions with regard to the effect of this ordinance are made in paragraph 24 of the amended bill of complaint. (Record, page 123.)

They may be summarized as follows:

1. That the ordinance by its terms *required* the complainant to construct a portion of the cross-town railroad in Willson Avenue, the other portion to be constructed by The Cleveland City Railway Company and to operate cars thereon under the control and regulation of the Council.

2. That Section 6 of the ordinance provided that passengers on any car operated on any part of Willson Avenue upon the payment of one fare should be entitled to be transferred to any other line of either of the constructing companies, with the additional right of transfer from such second line to a car on any other line of the company, operating the same crossing the Cuyahoga River, and further providing that passengers on any line of either of the said companies intersecting or coming to Willson Avenue should be entitled to a transfer to Willson Avenue and a continuous ride thereon without additional payment of fare.

3. That Section 7 of the ordinance requires the paving of the tracks and the space between the tracks and one foot

outside of each outer rail, and also requires the company to widen the roadway of Willson Avenue between Euclid Avenue and Scovill Avenue five feet on each side.

4. That by its terms said grant is stated to be in force until the first of July, 1914. It is then stated that at the time this ordinance was passed The Cleveland Electric Railway Company was operating various lines, as to some of which the date of expiration was the first day of July, 1914, and further that the Garden Street line intersects Willson Avenue.

From these considerations it is deducted that even if the various grants of The Cleveland Electric Railway Company and The Cleveland City Railway Company did not at the time of the passage of this ordinance continue until the first day of July, 1914, then the effect of this ordinance was to prolong grants earlier expiring, for the reason that it would be impossible for the two companies to carry out the provision as to transfers contained in Section 6, unless they were permitted to continue the operation of all intersecting and connecting lines to that date, and that therefore "The Council recognized the fact that your orator's right to operate therein (Central Avenue) did not expire prior to July 1, 1914."

In examining this contention it must be borne in mind that the Willson Avenue Cross-town line was built under authority of Section 2505, Revised Statutes of Ohio, which says:

> "That council of any city or village may grant permission by ordinance to any corporation, individual or company owning or having the right to construct any street railroad to extend their tracks, subject to the provisions of Sections 3437, 3438, 3439, 3440, 3441, 3442 and 3443 on any street or streets where the Council may deem such extension beneficial to the public, and when any such extension is made the charge for carrying passengers on any street railroad so extended and its connections made with any other road or roads by consolidation under

existing lines shall not be increased by reason of such extension or consolidation."

In other words the Willson Avenue road was constructed not as an original grant to the person or corporation that would agree to carry passengers thereon at the lowest rate of fare, the person being ascertained as the result of competitive bidding, but was a mere extension of the tracks previously authorized to be constructed by grants made under favor of Sections 2501 and 2502 R. S. containing definite and fixed limitations as to their duration.

As we have before indicated, the tracks authorized to be extended were in part owned by one company and in part by the other. The Cleveland Electric Railway Company owned tracks in Willson Avenue at the intersection of Scovill Avenue limited to expire on the 26th day of January, 1910; it also owned tracks in Willson Avenue at the corner of Perkins Avenue limited to expire July 13, 1913, as a part of its Euclid Avenue line. The Cleveland City Railway Company owned tracks in Willson Avenue at the intersection of Hough Avenue, then limited to expire the 26th day of January, 1910, and the tracks at the intersection of Woodland Avenue and Willson Avenue, then limited to expire, as this Court has determined, in 1908.

An examination of this Willson Ave Cross-town ordinance (Record page 235), and the acceptance thereof, (Record page 238), shows that by the title of the ordinance it was not to be distinguished from any other mere extension ordinance, the language of the title being "An ordinance granting permission to The Cleveland Electric Railway Company and The Cleveland City Railway Company to extend their tracks in Willson Avenue." The first section of the ordinance is confined to a description of the tracks authorized to be constructed and the purpose of such construction, which is stated to be,

"Such extensions to be constructed, main-

tained and operated in connection with the existing tracks in said Willson Avenue as a double track street railroad, with the necessary poles and overhead wires and to be operated by means of electricity as a motive power upon the following terms and conditions."

The complainant repeatedly refers to ordinances of the City of Cleveland as *requiring* and *compelling* the street railroad companies to do various things and in this instance the bill of complaint describes the Willson Avenue Cross-town Line as *requiring* The Cleveland Electric Railway Company to build these tracks and operate them, the inference being that a hardship was thus placed upon the company. The uniform language of all the ordinances in this regard is that permission is granted by the Council and in this Willson Avenue ordinance the Court will observe that in the title and in the granting clause in Section 1, the thing that the Council describes itself as doing is granting a privilege and not imposing a burden. It is to be further noted that the exact privilege as described by the Council was the right to construct these tracks in the streets described and to operate them in connection with the existing tracks in Willson Avenue as a double-track street railroad. This language of description is not patient of a construction which would extend it to include all the other lines owned by both companies in the City of Cleveland at that time.

In Section 2 the Council reserves the right to regulate the mode and manner of use of the tracks proposed to be constructed so as to afford each company such rights thereon as the Council deems just in the event of disagreement between the two constructing companies.

In Section 3 the Council reserves the right to suspend the running of cars on any part of said extensions in the discretion of the Board of Control for such period as may be necessary on account of the construction of public im-

provements in the streets. This again shows that the Council was not dealing with a general renewal of all existing and outstanding street railway grants, for the need of reservation here would have been of supreme importance, to be applied generally to all tracks which were subsequently to be operated under authority of this ordinance. The Council, however, plainly is imposing conditions upon the operation of the extended tracks only and not upon the operation of intersecting or connecting lines.

Section 5 regulates the mode and manner of the operation of cars in Willson Avenue requiring that cars be stopped at all street intersections at which persons may desire to enter or leave the same; that night cars shall be operated between given hours; that specified kinds of motor and cars shall be used in Willson Avenue; that a specified weight and pattern of rail shall be laid therein and that the companies shall be required to sprinkle between the outer rails of their tracks on said Willson Avenue over a given space in a manner satisfactory to the Director of Public Works. All the details of operation dealt with in this section were ordinary and necessary to be incorporated in any street railway grant. If it had been intended that this ordinance should be in substitution for or prolongation of the grants upon connecting and intersecting lines these terms would have been made to apply to all the lines operated by both companies; cars upon them would have been required to be stopped at street intersections to receive passengers; schedules for the operation of cars upon such intrsecting and connecting lines would have been provided, the mode of constructing and maintaining track in other streets upon which intersecting and connecting lines were operated would have been operated.

Section 7 contains provisions similar to those in Section 5 regulating the mode of constructing the tracks, the amount of paving required to be done, the character of the paving, limiting it in each case to apply only to those parts

of Willson Avenue over which track extension is by this ordinance authorized.

Section 8 provides that the companies shall widen Willson Avenue between Euclid Avenue and Scovill Avenue and bear certain expenses apparently rendered necessary by the installation of a double-track railroad in the street, but contains no reference of any sort direct or indirect to any other line of cars operated by their company.

Section 9 provides that the company shall comply with and perform all of the general ordinances of the city relating to street railroads now or hereafter in force, being apparently intended to bring the Willson Avenue extension grant under the same police regulations as had previously been enacted to apply to the other lines owned by the company.

Section 10 is exceedingly brief. It says: "This grant shall be in force until the first day of July, 1914." This would have been the place for the Council to insert, if it had intended it, language which would have prolonged the right to continue the operation of intersecting lines.

Section 11 provides the formalities of acceptance of the ordinance.

Section 12 is exceedingly significant. It provides that the failure or refusal of either of the companies at any time to comply with and perform all and singular the terms and conditions of this ordinance applicable to such company or the general ordinances of the city relating to street railroads now or hereafter in force shall work a forfeiture *of this grant* as to such companies so in default and the rights and privileges thereby granted to the same shall become null and void upon the passage of an ordinance by the Council to that effect.

Such are the provisions of this ordinance. It was accepted by The Cleveland City Railway Company as a mere

ordinance authorizing the construction of street railway tracks in Willson Avenue and accepted generally by The Cleveland Electric Railway Company, neither company indicating in the slightest manner any claim on their part that the ordinance had any relation to the operation of their other lines.

If this ordinance was really an ordinance to renew all outstanding grants, all intersecting and connecting lines, then what shall be said of Section 12 above referred to? It is contended by counsel for the complainant that this ordinance imposed serious burdens upon the two companies, that they were by it required to construct a street railroad as a cross-town line and to exchange passengers by transfers both from intersecting lines to the cross-town line and to lines of one another; the inference sought to be impressed upon the Court being that this ordinance was passed *in invitum*, that it imposed grievous burdens upon these two companies, that it was undertaken by them almost against their will, and yet under the plain terms of Section 12, if either of the companies desires now or has desired at any time from their acceptance of this grant to avoid all these burdens and obligations, the remedy lies in a refusal to perform them, for Section 12 provides that the failure or refusal of either company to abide by the conditions under which the Willson Avenue grant was made, shall work a forfeiture as to that company only of its rights in Willson Avenue and not that it shall have any effect upon their continued operation of outstanding grants.

Suppose The Cleveland Electric Railway Company were to refuse to transfer passengers as required by Section 6 of this ordinance, and in a *quo warranto* proceeding the question were raised of the effect of this refusal upon their rights in all the streets, constituting as they say, 236 miles of tracks of the City of Cleveland, can it be conceived that any court would say that the language of Section 12 imposed upon that

company a forfeiture of all of its rights in all the streets for such refusal, when the language of the section itself is that such refusal shall work a forfeiture *of this grant.* It is plain that in such a case a court would decree an ouster of the privileges conferred by this ordinance and The Cleveland Electric Railway Company would be ousted from the possession of such portions of Willson Avenue as were occupied under its terms, but the right to operate its lines upon intersecting streets would manifestly be left unaffected by such a judgment.

With regard to Section 6 of the ordinance, being the section which requires the reciprocal transfer of passengers, it is to be noted that transfers are not recognized by the statutes of the state, there being no statute relating to that subject. It is further especialy to be noticed that transfers first come into the street railway legislation of the City of Cleveland on the initiative of the complainant. Less than a year before the passage of the Willson Avenue grant the complainant company had become a consolidated company, making its consolidation by advice of counsel and without any application to the authorities of the City of Cleveland. The first consolidation took place on the 25th day of March, the second on the 24th day of April, 1893,and about a month later, May 22, 1893, the company informed the Council that it had since its consolidaton had been effected,

> "issued transfer checks to all persons desiring them to enable such persons to have a continuous ride over any East Side line to any South or West Side line of the company to any East Side line for one fare, and will continue such system of transfers where it cannot better accommodate its patrons by such other lines as it may establish. That it disclaims all intention of charging more than one fare for any such continuous ride."

As we have shown above, when that communication was sent to the Council The Cleveland Electric Railway

Company did not deem its issuance of transfers a consideration upon which it could properly base a request for a prolongation of grants, but rather the just inference is that such transfers were beneficial to the business of the company, and so when the Willson Avenue grant came to be passed, the inclusion of the old transfer system which had been originally established by The Cleveland Electric Railway Company voluntarily and for the benefit of its own business, was not treated as a burden upon the grantee of such a character as to require or justify the consideration of the length of the life of its outstanding grants.

Indeed the contention of the statute law of the state at the time the consolidation of 1893 and Willson Avenue extension of 1894 were authorized was such that no increased fare for a continuous ride could be authorized by reason of any such consolidation or extension. (See Section 2505 R. S. cited above.) The Court will recall that the thing the Council was doing was to extend existing tracks and that the law required that upon such extensions no increased fare might be charged. The effect of Section 6 therefore was only to write into this ordinance what the law of the state already required *plus* what the policy of the company had already determined to be for its own interest.

Apply to this Willson Avenue Cross-Town Line the tests of public policy proposed by Mr. Justice Gray in the case of *The Central Transportation Company vs. Pullman Palace Car Company*, 139 U. S., 24, assume that this grant was made at the solicitation of these grantees and that it was drawn up by them or their agents and that the words used are their words, can it be supposed that the grantees were unaware of the date of the expiration of their various grants, or that the extension of life upon their outstanding grants, from four to six years, was a thing so slight that it escaped their recollection, or was deemed by them so unimportant an incident that no language was needed to convey

that right to them from the public? The rule of law, as we have discovered, holds them at their peril to state explicitly the thing they seek to secure from the municipal corporation and estops them from subsequently claiming more than they express in their language in the grant. At the time this Willson Avenue grant was made the Council was not asked to extend the life of the grants of The Cleveland City Railway Company for from four to six years, nor the life of some of the grants of The Cleveland Electric Railway Company for four years—that subject was not addressed to it—it was not considered—it is not spoken of in the ordinance and no equitable consideration is presented which can for a moment stand in the way of an application of the doctrine which this Court has so firmly established, that as against the government no inference will prevail to secure or prolong a private right in derogation of the public right. An attempt is made to present such an equity by the requirements of Sections 5 and 7 of the ordinance requiring the paving of the streets and the maintenance and sprinkling of the paving, and the requirements of Section 8, which imposed upon the company as a part consideration for the privileges granted, the widening of a portion of Willson Avenue, but all the requirements imposed as to the operation of cars in Section 5 were police regulations which the City of Cleveland now has the right to superimpose upon outstanding grants. This is true likewise of the laying of the girder rails and the weight of the rail, if those things be essential to the safe and convenient operation of cars in the street and the requirements as to paving contained in this ordinance were already imposed by the state law and by general ordinances of the City of Cleveland to which this grant was made subject in express terms.

Again about four months after the passage and acceptance of this Willson Avenue grant the Council of the City of Cleveland passed the ordinance of June 25, 1894. Record

page 239, being an ordinance to authorize an extension of tracks in Quincy Street from New Street to Willson Avenue, and here the Council made the right granted specifically to "terminate with the grant for said company's present line in Quincy Street." If the Council four months before had prolonged the Quincy Street grant to expire with the grant in Willson Avenue and these tracks were to connect with the Willson Avenue tracks, why was the language used, "Grant for said company's present line in Quincy Street?"

It is plain further that the Willson Avenue ordinance was an extension, the right to construct which was granted to two companies, the construction to be made from four pieces of track already in parts of the street. It was to be independently operated as a cross-town railroad, all the conditions imposed by statute and ordinance as to pavement and maintenance were imposed upon the construction and operation of this line. The voluntarily assumed obligation as to transfers, which apparently was a part of the policy of the complainant company and as apparently a part of the proposition made by it to the Council in its application for the right to construct this railroad, was sanctioned as applicable to it when constructed.

It is equally apparent that no language contained in the Willson Avenue ordinance extends any intersecting or connecting grant and that no obligation therein contained works any such extension.

The contention which Counsel make that the complainant will be unable to perform the obligations imposed upon it by the Willson Avenue ordinance, if the rights upon their intersecting lines expire at an earlier date and that therefore the intersecting lines must of necessity be extended, is inconsistent with their contention that the Willson Avenue grant was a burden thrust upon them for the public benefit, for the Willson avenue grant itself, as we have shown, provides the escape from that burden.

The subject-matter under consideration in this ordinance was Willson Avenue, not the systems of two street railroad companies covering a great city. The matter of a general prolongation of the life of two great systems was too large and important to be carried in a dark pocket through such an ordinance as this.

As this Court said in the case of *Blair vs. Chicago*, 201 U. S., 400,

> "One asserting private rights in public property under grants of franchises must show that they have been conferred in plain terms, for nothing passes by the grant except it be clearly stated or necessarily implied. Legislative grants of franchises which are in any way ambiguous as to whether granted for a longer or shorter time are to be construed strictly against the grantee."

THE SYSTEM OF THE CLEVELAND ELECTRIC RAILWAY COMPANY.

The contention of complainant's counsel in this connection is difficult to gather. It appears by inuendo and inference through the entire bill as originally filed, and in its amended form. The amended bill (Record page 189) describes the complainant as a consolidation company, and proceeds to show the steps by which it acquired the rights it claims, first calling attention to the original consolidations of 1893 and later to its acquisition by purchase of the rights, privileges and franchises of The Cleveland City Railway Company. In paragraph 26 of the amended bill (Record page 125) an account is given of street railroad conditions in Cleveland prior to the several consolidations and purchases under which all of the street railroad lines came to be operated by one company. It is said, for instance, that prior to the 29th day of May, 1893, the various lines which formed the consolidated company were operated independently with-

out transfers, and that *thereupon* the Council of the City of Cleveland, by legislative enactment prescribed the terms and conditions upon which the various companies might be consolidated into The Cleveland Electric Railway Company and consented to the consolidation upon the condition that thereafter all of said lines might be operated as one system, and upon the further condition that only one fare should be charged for a continuous ride, and upon the further condition that transfers should be issued. It is then stated that the complainant accepted those terms and conditions, and agreed to perform them, and that since the consolidation, the complainant has operated all these lines as one system, so that the several constituent lines have lost their identity. How far this statement is from a fair and frank narrative of the facts, is made perfectly plain by reading page 230 of the record, for it there appears that the consolidation of the several lines into The Cleveland Electric Railway Company, the installation of through lines, and the issuance of transfers was the voluntary act of the complainant company, thoroughly established and in existence before it was called to the Council's attention by a communication from the complainant company itself. The suggestion is equally refuted by reference to every ordinance in the record passed subsequent to the 29th day of May, 1893, for an inspection of any one of them will show that the Council thereafter did not deal with the complainant company as one street railroad, but as a company owning many street railroads, and extensions of various lengths were authorized to be made to the tracks owned by it, each limited to expire on the date previously fixed by the Council for the expiration of the particular line then authorized to be extended.

And so in paragraph 27 of the complainant's bill (Record page 126), it is asserted that on or about the 1st day of July, 1903, the complainant company acquired by purchase all and singular the railroad tracks, property rights and fran-

chises of The Cleveland City Railway Company which was then operating various lines of railroad in competition with the lines then owned by the complainant, and that by virtue of its acquisition of said lines, the complainant has been required to establish additional through lines, and through car service, so that there has resulted a complete merger of the property formerly owned by The Cleveland City Railway Co. into that formerly owned severally by The Cleveland Electric Railway Company, making a system aggregating two hundred and thirty-six miles, no part of which can be separated from the aggregate, and no part of which has been, it is claimed, treated separately by the Council. This claim, as stated, is disingenuous. The Court might reasonably infer from the statements made in the bill that the acquisition by purchase of the property of The Cleveland City Railway Company had been made with the acquiescence of the Council of the City of Cleveland, and that the Council of the City of Cleveland had required the establishment of additional through lines, and had taken some action which gave its consent to a merger of all this property into a system, over the separate parts of which the Council surrendered control. It is true the bill does not state that the Council took any such action, and, of course, if the Council had taken any such action, it would be in the record; but the fact is that the acquisition by purchase was made under authority of Section 2505-a of the Revised Statutes, which authorizes any corporation or company organized for street railroad purposes, to lease or purchase any street railroad or street railroads or railroad property operating as a street railroad, with all of the different franchises, rights and privileges, and provides the method in which such purchase may be made, and further expressly prohibits increase in the rate of fare charged for one continuous ride in the same general direction over all such purchased line when operated in conjunction with the lines of the purchasing company. This purchase was made

under favor of that statute, and so far as this record is concerned, the Council of the City of Cleveland has never been informed that the purchase has been made.

The constitution of Ohio prohibits the creation of corporations by special act, and since the adoption of the present constitution in 1851, the legislative policy of the state has been to provide by general laws for the incorporation of street railroad companies, providing their corporate powers, but, as we have shown above, remitting all such corporations to the local authorities for any rights they may desire in the public highways, and empowering such local authorities, as this Court has held, comprehensively to enter into contracts with such companies for the occupancy of the highways. Section 2505-a therefore authorized The Cleveland Electric Railway Company to purchase the railroad of The Cleveland City Railway Company, and expressly authorized it to acquire by such purchase the franchises and rights of The Cleveland City Railway Company. If it had been intended by the legislature that when one company acquired the property of another, the acquired property should be operated under the franchises already owned by the acquiring company, the legislature would have said so in the first place, and in the second place it would not have specifically provided that the franchises of the purchased property should go with the property. It is plain, therefore, that by the purchase of 1903, the complainant company acquired no rights or franchises which had not been previously possessed by the company from which it made the purchase.

In Section 27 of the amended bill (Record, page 126) it is said:

> "And the Garden Street extension is not now, and has not been since its acquisition of 1893, treated by your orator or the City Council or the public as having any identity separate and distinct from, but is and has been since said consolidation,

> treated as an integral part of the entire system of road in operation by your orator, and that were your orator to be now deprived of the right to operate the tracks or any substantial part thereof built in Garden Street as an extension of the original main line of The East Cleveland Railroad Company, it would be impracticable for it to continue to operate the general system with through car service and at one fare, with transfers, which it is now conducting over such entire system, so established as hereinbefore set forth."

This, perhaps, is the best statement of the system claim and of the inference sought to be drawn from it to be found in the bill. There is, however, not a statement made in the extract quoted which is consistent with the facts. The first statement made is that the Garden Street branch, since its acquisition in 1893, has been treated by the complainant and the Council as a part of the system and not as having a separate and distinct identity. That this is not true is shown by the ordinance of June 25, 1894, which authorized an extension of the Garden Street branch and limited the life of the extension to the life of the then existing grants in Quincy Street (Record page 239). This ordinance was accepted by the complainant company, so that both the Council and the company concurred in treating the Garden Street branch as a separate and distinct entity more than a year after its acquisition by the consolidated company. The second statement contained in the portion of the bill above quoted is that the Garden Street branch was built as an extension of the original main line of The East Cleveland Railroad Company. That this is not true, has been abundantly shown above, both for the reason that at the time it was built the statutes did not authorize the extension of existing lines, and also that the original Garden Street tracks were original grants made upon competitive bidding to ascertain the person who would carry passengers at the lowest rate of fare, and had nothing in common with the procedure by which extensions came subsequently to be

authorized. The third statement in the paragraph quoted is that it would be impracticable for the complainant to operate the general system with through car service, and at one fare, with transfers, if its right to the Garden Street line were declared to have expired. There is probably no evidence in this record upon this question except the map marked No. 437, found opposite page 258 of the record, which shows that the Central Avenue and Quincy Street lines are totally separate and susceptible of independent operation or independent suspension of operation.

The system claim of the complainant, however, is really more insubstantial than appears from the observations heretofore made. The maps and ordinances which are in the record show that from time to time prior to 1893, the Council of the City of Cleveland authorized the construction of independent competing street railroads; that in 1893, four of these independent and competing railroads operating under grants limited to expire at widely different times of their own motion, and for their own purposes, consolidated themselves into The Cleveland Electric Railway Company. The record also shows that prior to 1903, The Cleveland City Railway Company had come into existence by the consolidation of at least two independent and competing companies (Record page 109), each of which was in itself a consolidated company, so that The Cleveland City Railway Company was composed of various companies to which independent and competing grants had been made. So far as this record is concerned, there is nothing to show that any of the various consolidations which took place were ever sanctioned by the legislative authorities of the City of Cleveland except the consolidation of 1893, by which The Cleveland Electric Railway Company was formed. It is perhaps a fact that some of them were sanctioned, and that terms and conditions for their consolidation were prescribed by the Council, but the point here sought to be made is that the street railroad policy

of the Council of the City of Cleveland, prior to 1893, was to enfranchise independent and competing companies operating various lines in various parts of the city, and that from 1893 no legislative action of the City of Cleveland has ever been taken which recognizes the process of consolidation by which the present complainant has absorbed its competitors in any such way as would constitute acquiescence on the part of the city in the formation of a system. On the contrary, while the complainant company has been industriously acquiring its competitors, the Council in its every act has continued to deal with the complainant as the owner of railroads, and not of a railroad, and wherever it has been called upon to grant it additional privileges and extensions, it has dealt with the company as to a particular line to be extended. The system contended for by the complainant is created by a process of induction which derives its semblance of truth from a persistent disregard of every instance inconsistent with the theory sought to be established, and the instances inconsistent with that theory are like the exceptions to the French rules of grammar, which are said to be more numerous than the cases which conform to the rule.

The fact is that the system theory is not even a discovery, but a pure invention, and counsel for the complainant were themselves so unfamiliar with the system theory at the time of the beginning of this lawsuit that in the original bill filed in March, 1905, they only contended for the grants acquired by them from The Cleveland City Railway Company that none of them expire before January, 1910. When the amended bill came to be filed, counsel had become more familiar with the working details of the invention, and the fifth paragraph of the amended bill applies the system theory to the grants acquired from The Cleveland City Railway Company, as well as to those originally owned by the complainant itself. The importance of this theory to the complainant is no doubt felt to be that this Court will hesitate

to disturb a settled institution, and to break up an extensive system of street railroads which is the outgrowth of years of construction and operation. The council of the City of Cleveland has never lent any countenance to the upbuilding of such an institution, and has never consented that it should cease to exercise the control over the constituent franchises of the present company which it reserved in the ordinances by which these franchises were granted. The complainant company has accepted a multitude of ordinances passed subsequent to 1893, authorizing extensions of the tracks of its various lines, and limiting those extensions to expire with the dates fixed for the expiration of the lines, and earlier than the claimed date of expiration for the system. One such ordinance is that of June 25, 1894 (Record, page 239). Another is the ordinance of August 8, 1901 (Record ,page 241). Another is the ordinance of June 23, 1902 (Record, page 243). In the pamphlet containing ordinances supplemental to the printed record which has been printed by the city and is supplied to the Court, there will be found a large number of ordinances passed by the city, accepted by the company, extending tracks of its various lines with different dates of expiration, and those ordinances were passed before the passage of the ordinances affecting Woodland Avenue and Garden Street, litigated in the case of the *City vs. The Cleveland City Railway Company*, in the 194th U. S., and in the case at bar.

QUESTION RAISED BY THE CROSS-APPEAL.

Paragraphs 28 and 29 of the complainant's bill (Record, pages 132 and 133), set forth the attack made upon Ordinance No. 42240 on the ground that it is a law of the State of Ohio taking from the complainant its property without due process of law. This attack is based upon section 14 of the ordinance (Record, page 132) which provides that the rights therein granted to The Forest City Railway Company are upon the express condition that the grantee shall pay to the

owner of the tracks, poles, wires and appliances erected in the highways along the route described, the value of such appliances in the highway to be agreed upon between the grantee and the owner not later than the 22nd day of December, 1904, plus an arbitrary sum of 20% added to such valuation, and that in the event that the grantee and the owner of such appliances are unable to agree, then the grantee shall pay to the owner such sum as shall be finally adjudicated by a court of competent jurisdiction to be the value thereof. This provision the complainant says requires it to turn over its property to The Forest City Railway Company, either upon a valuation to which it is compelled to agree, or to permit its property to be taken by The Forest City Railway Company and be remitted to damages in an action of trespass for the injury done it.

The answers of the two defendants concur in denying this interpretation of section 14 of the ordinance, both defendants saying in effect (Record, pages 155, 156) that section 14 is a mere attempt on the part of the Council to protect the complainant against hardship. An inspection of section 14 of this ordinance shows beyond question that it does not prescribe any duties for The Cleveland Electric Railway Company nor attempt to order it to adopt any course of conduct. It is a mere condition imposed upon the grant to The Forest City Railway Company that if it desires to have the privileges granted by the odinance it must do equity to its predecessors in the occupancy of those streets.

The question of real importance raised by this cross-appeal, however, is whether or not the tracks and fixed appliances of a street railroad company placed in a street under a contract with the municipal corporation limited to expire at a definite time and not removed by the railway company within the period of its lease, are removable? In other words whether street railroad tracks and appliances annexed to a public highway under such a franchise do not, upon the expiration of

the franchise, become a part of the realty and therefore the property of the municipal corporation?

This question has, so far as I have been able to discover, not been judicially determined. Fixtures occupy the border land between real and personal property, and things in their nature personal have been held at times real and at times personal, as the circumstances of the particular case seemed to require. In Ohio the case of *Teaff vs. Hewitt*, 1 O. S., 511, may be regarded as the leading case upon this subject. The Court there lays down three tests to determine whether or not personal property annexed to realty is to be considered a real or chattel fixture. These tests are:

1. The degree of annexation.

2. Adaptation of the thing annexed to use in that particular place.

3. The intention with which the annexation is made.

Thus it is said that if a chattel is so annexed to the freehold that its removal is impossible without disturbing the freehold it will be regarded as a real fixture and the right to remove denied. So it is said that if a thing personal in its nature is annexed to real estate, the thing annexed being of such a character that it is peculiarly adapted to use in that particular place, as for instance a blind cut for a particular window in a house, so that it is substantially useless elsewhere, the character of the chattel will be changed and it will become a real fixture. Both of these tests, however, seem to be but modes of arriving at the real intention with which the annexation was made and it is perhaps the fair result of the best considered cases on the subject of fixtures, to say that a chattel annexed to real property will be deemed a real fixture when the person making the annexation intended it to be permanent.

In dealing with the subject of fixtures the courts have drawn many distinctions based upon the relation of the parties as between whom the contention arose. Between mortgagor

and mortgagee the courts incline to favor the mortgagee and to prevent an impairment of his security. As between heir and personal representative the courts incline to favor the heir and to prevent a destruction of the value of the inheritance. As between the personal representative of a life tenant and the remainder man the law probably favors the personal representative of the life tenant. Most of the cases, however, arise between landlord and tenant and out of this relationship has grown the class of fixtures known as trade fixtures consisting of those chattels annexed to land held under lease, the annexation being made by the tenant for the purposes of the business which he desires to conduct on the leased premises. Here the policy of the law is to favor the tenant, it being a reasonable presumption that the annexation made by him was not for the improvement of the freehold in which he has no interest and was therefore not intended to be permanent. When, however, a tenant annexes chattels to a freehold and in his lease reserves no right of removal and subsequently allows his lease to expire without having removed, the courts hold this failure on his part a waiver of any right which he previously had so to to remove and in effect regard it as conclusive evidence of his original intention to make a permanent addition to the freehold.

The relation between the City of Cleveland and The Cleveland Electric Railway Company is probably not exactly that of landlord and tenant and not exactly licenseor and licensee. In Ohio the cities own the fee in the streets for public uses, one of those public uses, as the Supreme Court of Ohio has many times held, is the operation of street railroads. So that when a contract is made between a city and a street railroad company, under authority of which street railroad tracks are constructed in a street, the city must be deemed to have authorized the placing of structures in the streets appropriate to the trust under which it holds the title to them. Street railroad tracks therefore in a street are a proper struc-

ture and are consistent with the uses to which the street is to devoted. A street railroad company is apprized by the language of the statute itself that it can have no longer license or lease in the streets of an Ohio city than twenty-five years and in making its contract with the city it has the right and perhaps the duty to reserve to itself the right of removing its structures at the termination of its period of lease, if it so desires to do.

The nature of a street railroad in a street is such that in order to its construction the integrity of the soil must be disturbed, excavations must be made, ties of wood laid in the excavation, masses of concrete placed upon the ties and iron rails welded from end to end into a continuous piece are affixed to the ties—then the pavement consisting often of solid sheets of asphalt or of stone or of brick laid in cement are placed over the entire structure except the mere surface of the rails. To remove such a structure would necessarily damage the street, it would likewise almost destroy the value of the property removed. The degree of annexation, applying the old tests of *Teaff vs. Hewitt*, is as great here as is conceivable to be in any case. The adaptation of these particular rails and ties to use in this particular place is very great, for they must be broken up and substantially destroyed to be removed and reassembled in any other place, and what shall be said of the intention with which the annexation was made? It is entirely probable that the street railroad company at the time it made the annexation expected from time to time a renewal of its rights of operation, and that the statute contemplated the possibility of such renewals upon terms and conditions conducive to the public welfare by the Council. But if this expectation of the constructing company is disappointed it must be assumed to be because that company is unwilling to offer terms deemed conducive to the public interest by the Council and that therefore its failure to secure such renewal is, so far as the public is concerned, its own fault. This subsequent dis-

appointment could not affect the original intention with which the annexation was made.

But more significant still, there is no contract from the beginning to the end in which there is a reservation of a right on the part of the constructing company to remove at the termination of the lease, nor is there any provision inserted as to what shall be done by such a company upon the removal of its tracks and appliances to restore the street to the condition in which either it was found when entered by the company or in which it was prior to the removal of the structure. Under these contracts if the street railroad company has the right to tear up streets that are paved with stones and there is nothing in the contract that requires them to leave the streets in any other condition than open trenches from end to end.

And what has the company the right to remove, what it placed there? Manifestly not, for both under the statutes of Ohio and under these contracts the company has placed paving in the street and it would not be contended that it had the right to remove paving, so that it would seem that the intention with which these structures were placed in the street was that they should be permanent; that they are so affixed to the freehold that both the fixtures and the freehold would be damaged by removal and that these structures are an essential part of a complete street when they are thus installed. Citation of authority upon the various propositions here suggested is not necessary so far as the general law on the subject of fixtures is concerned and upon the special question here raised there are no decided cases. It may be helpful, however, to call attention to the case of *Cincinnati & Spring Grove Avenue Street Railway Company vs. Cumminsville*, 14 O. S., 523, as authority for the proposition that a street railroad in a street is a mere part of the public use for which the street is owned by a municipality. Also the case of *Traction Company vs. Parish*, 67 O. S., 181, as containing a comprehensive

statement of the law of Ohio on the relation of the municipality to its streets and of street railroad rights in streets.

The cases which hold railroad tracks, switches and appliances real estate for purposes of taxation are illustrative as are the cases which hold such appliances real estate in order to bring them under the cover of a mortgage, but it must be admitted that these cases are not conclusive—their effect is probably summed up in 1 *Elliott on Railroads*, Sec. 31 as follows: "In those cities in which the subject is controlled by statute the preponderance of authority is to the effect that only the land owned by the railroad company, together with the ties, rails and other structures permanently affixed thereto, is realty and that engines, cars and other movable appliances are to be regarded for most purposes as personalty."

See also *Prov. Gas Company vs. Thurbur*, 2 R. I., 15, where it is held that gas pipes laid by a corporation in a public street by authority of a charter repealable at the will of the Legislature and sunk into the soil to the depth of several feet and not removable without digging up the earth are fixtures and taxable as realty.

In *Coe vs. Railway Company*, 10 O. S., 372, the question arose as to whether the rails and permanent fixtures, as well as the rolling stock, were to be included within the provisions of a real property mortgage. The Court on page 378 draws the distinction between permanent structures, "the timber and iron for the track, the stones and timber for bridges and culverts" and the locomotives, cars and other articles, holding the former to be real fixtures and the latter to be personal property.

This Court in the case of *Wiggins Ferry Company vs. Ohio & Mississippi Railroad Company*, 142 U. S., 396, held that railroad tracks placed by the railroad company on the land of the Ferry Company for a temporary use were properly removed by the receiver of the railroad company and said

"As between landlord and tenant or one in tempo-

> rary possession of land under any agreement whatever for the use of the same, the law is extremely indulgent to the latter with respect to the fixtures annexed for the purpose connected with such tempory possession."

This case, however, shows that there was no definite lease at the end of which the tenant would have known that his rights expired, nor were the railroad tracks so let into the property of the Ferry Company that tracks themselves would be damaged and the property of the Ferry Company likewise damaged by their removal. It would hardly seem, therefore, that the question here presented is adjudicated by that case.

The defendants below relied upon the fact that Section 14 of the ordinance No. 42240 was not, when properly interpreted, an attempt to take the property of the complainant company without due process of law but was a mere effort on the part of the public authorities to protect the complainant as fully as it could from any loss by reason of the change of tenants upon the streets in question. Upon this position the city still relies and it is respectfully submitted that the decree rendered by the Circuit Court should in this respect be reversed.

For the reasons above set forth the City of Cleveland respectfully submits that the rights of The Cleveland Electric Railway Company in Central Avenue, Erie Street and Quincy Street expired on the 22nd day of March, 1905, and that the decree of the Circuit Court to that effect should be affirmed.

Respectfully submitted,

NEWTON D. BAKER,

City Solicitor.

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JAMES H. McKENN

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906

No. 197.

THE CLEVELAND ELECTRIC RAILWAY COMPANY,
APPELLANT,

vs

THE CITY OF CLEVELAND ET AL.

ADDITIONAL ORDINANCES SUBMITTED BY THE CITY OF CLEVELAND

NEWTON B. BAKER,
City Solicitor.

F. W. ROBERTS CO., PRINTERS, CLEVELAND, OHIO

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THE CITY OF CLEVELAND ET AL

ADDITIONAL ORDINANCES SUBMITTED BY THE CITY OF CLEVELAND

AN ORDINANCE to grant the St. Clair Street Railroad Company an extension of its charter for a term of twenty-five years.

Section 1. Be it ordained by the City Council of the City of Cleveland, that the St. Clair Street Railroad Company, its successors and assigns, be and the same are hereby authorized to reconstruct, maintain and operate its double track street railway with the necessary switches, turn-tables and turn-outs, commencing at Water street, thence through and along St. Clair street to Becker avenue, subject to the following conditions and limitations, to-wit:

Sec. 2. All tracks hereafter laid by said company to be of the same gauge as heretofore and now existing, or standard gauge, and the rail of the pattern as now laid and used on

said railway or that may be hereafter found necessary and consented to by the City Council, with suitable gutters at all necessary points, so as to permit the free flow of water under the same and on such grades as are now or may hereafter be established by the City Council, and subject at all times to be taken up and relaid whenever deemed necessary by the Council.

Sec. 3. Whenever the city shall deem it necessary to grade, regrade, pave or repave any streets wherein said tracks are laid, the company shall be required to pave or pay the cost of the same at such time and in such manner as the board of improvements may direct (at the city's option), any part or all the track between the rails used by them with such pavement as the Council and Board of Improvements may deem proper, unless, in the judgment of the Council and Board of Improvements, pavement laid prior to such repaving shall be in sufficiently good condition and grade. And said company is also required to keep such pavement in constant good order, said paving and repairing to be done under the direction of and to the acceptance of the Board of Improvements.

Sec. 4. Said company shall place and continue on said railway good cars with all modern improvements for the convenience and comfort of passengers, and shall run cars thereon as public convenience may, in the judgment of the City Council, require, under such directions as the City Council may from time to time prescribe.

Sec. 5. Said company shall not charge more than five cents each way for one passenger on the whole or any part herein renewed, but said company may charge a reasonable compensation for carrying packages.

Sec. 6. It is understood and agreed that the City of Cleveland shall not be held liable to said company for any damage resulting from the breakage of any sewer or water pipes, or from any delay that may be caused by the construction of sewers, the laying of water or gas pipes, or the necessary repairing of the same, or from any delay or damages that may be

caused by fire or otherwise, all rights vested in the City Council, the trustees of waterworks or gas company in respect to the care and improvement of streets, the construction of sewers, culverts or drains, the laying of water and gas pipes therein, are in no way to be impaired or affected by the privileges hereby granted to said company, but the rights and privileges hereby granted to said company, by virtue of this ordinance shall be subject thereto; and said company shall be liable for any loss or injury that any person may sustain by reason of any carelessness, neglect or misconduct of their agents or servants in the management, construction or use of said railway and said company shall indemnify and hold the city harmless from any damage that may be claimed by property holders, or by any person or persons, on account of laying of the track, or in the use, or by the reason thereof, or by running the cars thereon.

Sec. 7. Said company shall be required to pay to the City of Cleveland an annual license of ten dollars for each car used on this railway.

Sec. 8. The authority and privilege in this ordinance named and provided for are to be and remain in force for the full period of twenty-five years from the date of the passage of this ordinance, the said company, its successors and assigns, performing the several conditions by this ordinance required.

Sec. 9. That in case of failure by neglect or otherwise on the part of said St. Clair Street Railroad Company, its successors or assigns, to perform all and singular the conditions of this ordinance, together with all and singular the general ordinances of the city now or hereafter in force or amendments hereto, the privileges hereby granted and renewed shall become void and of no effect and shall cease upon the adoption of an ordinance of the Council to that effect.

Sec. 10. This ordinance shall take effect and be in force from and after its passage and legal publication and filing by said company with the city clerk of a written acceptance of the

terms and conditions thereof and paying to the city the cost of printing the same.

Passed January 5, 1885.

AN ORDINANCE to grant to the Superior Street Railroad Company an extension of its charter for a term of twenty-five years.

Section 1. Be it ordained by the City Council of the City of Cleveland, that the Superior Street Railroad Company, its successors and assigns, be and the same are hereby authorized to reconstruct, maintain and operate its double track street railway, with necessary switches, turn-tables and turn-outs, commencing in Superior street at the west side of Monumental Park; thence along and through Superior street to East Madison avenue, and along and through Payne avenue from the intersection of Superior street to Willson avenue, thence along and through Willson avenue to Lexington avenue; thence along and through Lexington avenue to East Madison avenue; *Provided,* however, that in case the city should at any time in the future find it necessary (in order to avoid crowding Superior street at the point of the beginning of said route) to change the westerly terminus by extension in such manner as to avoid a stop for turning or changing horses, said conditions to change terminus shall be complied with by said company; and *provided* further, that the city reserves the right to compel joint use with other companies of all tracks in Superior street, as far east as Erie street; and, if in the judgment of the city, it be necessary to construct additional tracks for the accommodation of the public, then said company shall construct such tracks, switches and turn-outs as the city may require, subject to the following conditions and limitations, to-wit:

Sec. 2. All tracks hereafter laid by said company to be standard gauge and the rails of the same patterns as now laid and used on said railroad, or that may be hereafter found necessary and consented to by the City Council, with

suitable gutters at all necessary points so as to permit the free flow of water under the same and on such grades as are now or may hereafter be established by the City Council, and subject at all times to be taken up and relaid whenever deemed necessary by the Council.

Sec. 3. Whenever the city shall deem it necessary to grade, regrade, pave or repave, any streets wherein said tracks are laid the company shall be required to pave or pay to the city the cost of the same at such time and in such manner as the Board of Improvements may direct, at the city's option, any part or all the track between the rails used by them with such pavement as the Council and Board of Improvements may deem proper, unless in the judgment of the Council and Board of Improvements the pavement laid prior to such repaving shall be in sufficiently good condition and grade; and said company is also required to keep such pavement in constant good order, said paving and repaving to be done under the direction of and to the acceptance of the Board of Improvements.

Sec. 4. Said company shall place and continue on said railway good cars with all modern improvements for the convenience and comfort of passengers and shall run cars thereon as public convenience may in the judgment of the City Council require under such directions, as the City Council may from time to time prescribe.

Sec. 5. Said company shall not charge more than five cents each way for one passenger on the whole or any part herein renewed. The company shall sell tickets through its conductors at rates as follows: Eleven (11) for fifty cents and twenty-two (22) for one dollar; but said company may charge a reasonable compensation for carrying packages.

Sec. 6. It is understood and agreed that the City of Cleveland shall not be held liable to said company for any damages resulting from the breakage of any sewer or water pipes, or for any delay that may be caused by the construction of sewers, the laying of water or gas pipes, or the necessary

repairing of the same, or for any delay, or damages that may be caused by fire or otherwise. All rights vested in the City Council, the trustees of water works or gas company in respect to the care and improvements of streets, the construction of sewers, culverts or drains and the laying of water and gas pipes therein are in no way to be impaired or affected by the privileges hereby granted to said company, but the rights and privileges granted to said company by virtue of this ordinance shall be subject thereto, and said company shall be liable for any loss or injury that any person may sustain by reason of any carelessness, neglect or misconduct of their agents or servants, in the management, construction or use of said railway. And said company shall idemnify and hold the city harmless from any damage that may be claimed by property holders or by any person or persons on account of the laying of the track, or in the use, or by reason thereof, or by running the cars thereon.

Sec. 7. Said company shall be required to pay the City of Cleveland an annual license fee of ten dollars for each car used on this railway.

Sec. 8. The authority and privileges in this ordinance named and provided for are to be and remain in force for the full period of twenty-five years from the date of the passage of this ordinance, the said company, its successors and assigns, performing the several conditions by this ordinance required.

Sec. 9. That in case of failure by neglect or otherwise on the part of said Superior Street Railroad Company, its successor or assigns, to perform all and singular the conditions of this ordinance or amendments hereto, together with all and singular the general ordinances of the city now or hereafter in force or amendments thereto, the privilege hereby grantd and renewed shall become void and of no effect and shall cease upon the adoption of an ordinance of the Council to that effect.

Sec. 10. This ordinance shall take effect and be in force from and after its passage and legal publication and filing by said company with the city clerk of a written acceptance of the terms and conditions thereof and paying to the city the cost of printing the same.

Passed January 26, 1885.

AN ORDINANCE to fix the terms and conditions upon which the railway tracks of the West Side Street Railroad Company and the tracks of the Woodland Avenue Railway Company and said companies may be consolidated.

Section 1. Be it ordained by the City Council of the City of Cleveland, that the consent of the city is hereby given to the consolidation of the West Side Street Railroad Company and the Woodland Avenue Railway Company on the following conditions:

The said consolidated company to carry passengers through without change of cars by running all cars through from the workhouse on the line of the Woodland Avenue Railway to the point on the West Side Street Railroad where Gordon avenue crosses Lorain street, and when practicable in the judgment of the council to do likewise on the branches of the consolidated line, and that for a single fare from any point to any point on the line or branches of the consolidated road no greater charge than five cents shall be collected, and that tickets at the rate of eleven for fifty cents or twenty-two for one dollar shall at all times be kept for sale on the cars by the conductors.

Sec. 2 Said consolidated company shall be subject to all the liabilities, conditions and penalties to which said several companies are liable; and said consolidated company and its tracks shall at all times be subject to the control, regulation and supervision of the City Council, to the same extent that the said several companies and their tracks are now liable.

Sec. 3. This ordinance shall take effect and be in force from and after its passage and legal publication, the filing with the city of a written agreement accepting and agreeing to the

terms thereof, signed by the proper persons for the companies consolidated, and the payment to the city of the expenses of printing and publishing this ordinance.

Passed February 16, 1885.

AN ORDINANCE granting the Woodland Avenue and West Side Street Railroad Company the right to use electricity in operating its street railroad.

Section 1. Be it ordained by the City Council of the City of Cleveland, That the Woodland Avenue & West Side Street Railroad Company is granted permission to operate its entire line of street railroad, as the same now exists, with any and all extensions that may hereafter be made thereto, by electricity as a motive power, using such electric plant in the public streets as shall be acceptable to the Board of Improvements, and, for such purposes, said company shall have the right to erect and maintain poles, wires, fixtures or conduits and all other appliances or appurtenances that, in the opinion of said board, shall be found necessary to successfully operate its street railroad by electricity.

Sec. 2. In the erection of poles and the placing of wires or conduits, and in the use of any and all other appliances or appurtenances that may be found necessary to operate its line of electricity, before the improvement shall be made upon any or all of its lines for the purpose of using electricity, a plan of the same, showing all poles, wires and other appliances or appurtenances that said company shall desire to use, shall be submitted to and approved by the board of improvements, said board having the right to fix the distance at which poles shall be apart, the height of all poles and wires, and the size and location of all conduits, and to regulate the places within the streets where any and all appliances or appurtenances shall be located, and to establish such regulations with reference to the public safety, protection, painting and sightliness of the poles and appurtenances as the said Board of Improvements shall determine.

Sec. 3. The running of cars on any part of the lines of such company may be suspended by the Board of Improvements for such reasonable time as may at any time be necessary on account of the construction or repairs of streets, or sewers, or other public improvements, and whenever it may be necessary to have any track taken up for the purpose aforesaid the same shall be taken up and relaid at the expense of said railroad company whenever required by said board.

Sec. 4. Said railroad company shall at all times hereafter defend, keep harmless and indemnify the City of Cleveland from any and all damages, lawful claims and demands for injuries to persons or property, costs and expenses to which said city may be subjected, or made liable by any proceeding at law or in equity or otherwise growing out of the grant of the privileges in this ordinance granted, or out of the exercise and enjoyment of the same by said company.

Sec. 5. Said company shall at all times conform to such rules and regulations as may from time to time be made by the Council and approved by the Board of Improvements, as to the rate of speed it may run its cars, and while the cars of said company are in motion, or about to start, warning shall be given by bell or otherwise, to notify persons of any immediate or approaching danger.

Sec. 6. That the city reserves to itself the right to grant to any other person or persons, company or corporation, a joint use for street railroad purposes of the tracks, poles, wires, electric currents and other appliances herein provided for upon such portion of said Woodland Avenue and West Side Street Railroad Company's lines from the intersection of Pearl and Lorain streets, northerly along Pearl street to the Superior street viaduct; thence along the Superior street viaduct to Water street; thence along Superior street to Ontario street; thence along Ontario street to southerly line of Factory street, as is free territory under existing grants upon such terms and conditions as to occupation and compensation as the City

Council may deem just and reasonable in case such companies should fail to come to such agreement by and between themselves.

Sec. 7. The grant herein made shall be in force from and after the date of the passage and legal publication of this ordinance, and the written acceptance of the same by said company, and said company shall have the right to maintain and operate its present line and any and all extensions until the expiration of the present grant of said company, to-wit. The 10th day of February, 1908.

Sec. 8. Nothing contained in this ordinance shall in any wise release or relieve said company from compliance with all other ordinances relating to street railroads now in force, or which may hereafter be adopted by the City Council, including all amendments hereto and thereto.

Sec. 9. Said railroad company shall in writing accept the permission and privileges hereby granted and agree to comply therewith.

Sec. 10. This ordinance shall take effect and be in force from and after its passage and legal publication and the payment to the city auditor by said company of the expense of publication.

Passed March 22, 1889.

AN ORDINANCE granting to the Cleveland City Cable Railway Company the right to extend its line of railway in Hough avenue to the southerly side of said avenue and to cross Ansel avenue to the easterly line thereof on certain lines herein described.

Section 1. Be it ordained by the City Council of the City of Cleveland (two-thirds of the members concurring), That the Cleveland City Cable Railway Company, be and it is hereby authorized to extend and operate its line of double track railway in Hough avenue to the southerly side of said avenue, and to cross Ansel avenue to the easterly line thereof at the established grade of said avenue on the following

described center line between said tracks, to-wit: Beginning at a stone monument in the center of Hough avenue at a point seven hundred and thirteen (713) feet easterly of a stone monument in the center of Hough avenue and of Holt street, and thence in a direct line to a stone monument in the center of Doan street four hundred and fifty-four (454) feet south of a stone monument in the center of said Doan street and on the north line of Park Boulevard, as recorded in the Wade Park allotment, said line being the same center line as described in ordinance No. 1130, passed March 17, 1890, for the purpose of extending said Hough avenue between said points.

Sec. 2. That the tracks of said company shall cross said Ansel avenue at the established grade thereof, as fixed by ordinance No. 1453, passed April 7, 1891, if said tracks are constructed in advance of the grading of said Ansel avenue by the city. All necessary excavation, embankment, filling and side slopes necessary to properly sustain said tracks at such established grade shall be made by, or at the expense of said company, together with all necessary catch basins and connections, boxes and drains necessary to protect said embankment and street as shall be ordered by the Director of Public Works of said city.

Sec. 3. That said company shall make and maintain suitable approaches and roadways to and across said embankment for the accommodation of public travel and of private parties having the right to use the same, which approaches or roadways shall be of the full width of said Ansel avenue, and so constructed that the approaches from the northerly side of said crossing shall be filled to the established grade of said Ansel avenue, all as ordered by said Director of Public Works and as shown on the profile of said street on file in the office of chief engineer.

Sec. 4. That said company shall hold the city harmless from all claims for damages to person or property that may arise by reason of placing said embankment, approaches and

slopes, tracks, structures and drainage in, upon or across said Ansel avenue as herein provided.

Sec. 5. Said company is also hereby granted the right to extend and operate its line of tracks with proper curves, from its tracks now in the center of said Hough avenue to the southerly side of said avenue, and across said Ansel avenue to the easterly line thereof, upon the line heretofore described in Section 1 of this ordinance, as extending from Hough avenue to Doan street, proper catch basins, pipes, drains and crossings to be constructed at this point as shall be required by the Director of Public Works.

Sec. 6. That said grant as herein made to said company shall terminate with the grant of its main line, to-wit: Twenty-five (25) years from January 26, 1885, and is made on the condition that cars shall at no time be allowed to stand on or to be switched upon said Ansel avenue; that said company shall, within one year from the date hereof, secure and deed or dedicate to the city, free of cost, the right of way for a public street not less than sixty (60) feet in width, extending from Hough avenue to the easterly line of Ansel avenue, upon the line heretofore described in Section 1 of this ordinance, and as referred to in ordinance No. 1130, said street between said points to be properly graded, and proper culverts and drainage constructed by and at the expense of said company, all in such manner and to such grades as shall be acceptable to said Director of Public Works prior to such dedication, it being understood that said company shall have the right to construct and operate its line of cable railway upon the entire portion of said right of way between said points, either before or after its dedication to the city, at the option of said company, but within one year from the date hereof, and subject, after construction and dedication of right of way, to all provisions of law and ordinance and all rules and regulations now in force or hereafter to be in force governing street railways in public streets; and provided that the said railway company shall in writing accept the conditions and privileges

hereby prescribed and granted, within ten days after the passage and legal publication of this ordinance.

Sec. 7. That ordinance No. 1130, passed March 17th, 1890, providing for the extension of Hough avenue across said Ansel avenue to Doan street, be and the same is hereby repealed, and that this ordinance shall be in force and take effect on and after its passage and legal publication and the filing with the city clerk of a written acceptance by said company of the terms and conditions of this ordinance, and payment of the cost of its publication.

Passed June 22, 1891.

RESOLUTION.

By Mr. O'Brien:

That in the opinion of this Council all franchises granted by this Council for the use of streets for street car lines should terminate July 1, 1914, instead of 25 years hence.

Adopted March 27, 1893.

This is to certify that an examination of the records of the Council of the City of Cleveland shows that on the 27th day of March, 1893, when the resolution introduced by Mr. O'Brien as to dates of expiration for street railway franchises was passed, there was pending in the council an establishing ordinance introduced pursuant to an application therefor by L. A. Russell and W. C. Schofield; said application requesting the establishment of a route to be operated subject to competitive bidding, and there was also pending the application of The Cleveland Electric Railway Company hor a grant for twenty-five (25) years for a cross-town line in Willson avenue.

Said records of the council further disclose the fact to be that an election for councilmen was held on the 1st day of April following, and five persons of the members of the Council on said 27th day of March ceased to be members thereof subsequent to said election. The total membership of the Council of the City of Cleveland at that time was twenty.

Given under my hand this 3d day of November, 1906.

Seal of City Clerk of the City of Cleveland

PETER WITT, *City Clerk.*

AN ORDINANCE granting permission to the Cleveland City Railway Company to extend its tracks from Superior street, along Erie street, to St. Clair street.

Section 1. Be it ordained by the City Council of the City of Cleveland, that the Cleveland City Railway Company is hereby granted permission to extend its double-track street railroad on and along Erie street from its present tracks at the intersection of Superior and Erie streets to the intersection of St. Clair and Erie streets, connecting its tracks on Superior street with its tracks on St. Clair street, with the necessary curves, and also poles and overhead wires, and to construct and maintain said extension and to operate the same by means of electricity as a motive power, upon the following terms and conditions:

Sec. 2. The laying of such tracks and the erection of such poles and the placing thereon of the necessary wires and the appliances shall be under the supervision and control of the Director of Public Works, and such poles shall be of such size and shall be set at such places as shall be required by said director. Should it become necessary in the prosecution of any work by the city that such poles be temporarily moved, such removal shall be made and such poles shall be reset by said company at its own cost. The running of cars on any part of the lines of street railroads of said company may be suspended by the board of control for such period as may at any time be necessary on account of repairs of streets or sewers or the making of any public improvements, and whenever it may be necessary to have any track taken up for any of the purposes aforesaid the same shall be taken up and relaid at the expense of said company.

Sec. 3. The said company shall at times use such precautions for the public safety as the Board of Control may from time to time require, and shall at all times defend, keep harmless and indemnify the City of Cleveland from and against all lawful claims and demands for any injury to persons or property, costs or expense to which the city may be subjected or

made liable by any proceedings at law or in equity or otherwise, growing out of this grant or out of the exercise or enjoyment of the same by said company.

Sec. 4. Within ninety days after the passage of this ordinance, the said company shall pay into the city treasury a sum equal to the cost of so much of the present pavement in Erie street and said street intersections as is embraced in a strip sixteen feet wide, extending from the northerly rail of the tracks now in Superior street to the southerly rail of the tracks now in St. Clair street, such cost to be ascertained, and determined by the Director of Public Works, and such portion thereof as was paid by the owners of abutting property, shall be repaid by the city to the present owners of such property, in such manner as the Council may deem proper. Whenever the Council shall deem it necessary to repave Erie street, said company shall pave, or pay the cost of paving as the Council may elect, a strip of sixteen feet in width along the entire length of said extension with such a pavement as the Council may deem proper.

Sec. 5. The said company shall comply with and perform all the terms and conditions set forth in a communication from the Woodland Avenue and West Side Railway Company, and the Cleveland City Cable Railway Company to the Council on the 15th day of May, 1893, in reference to the consolidation of said companies under the name of the resolution adopted by the Council on the same date consenting to such consolidation. Upon all its lines of street railroads within the City of Cleveland, said company shall place and continue the most approved cars, equipped and furnished with such improvements, equipments and appliances as the Council may deem proper for the safety, convenience and comfort of passengers, shall run said cars in such numbers, at such intervals of time, and under such rules and regulations as the Council may from time to time require, and shall cause the said cars to stop at all street intersections at which any person may desire to leave or enter the same. The Council shall have the right at any time to

require said company to operate its cars over the entire length of any of the lines of branches of the said constituent companies in the same manner and between the same terminals as cars were operated prior to the consolidation of said constituent companies under the name of The Cleveland City Railway Company. Night cars shall be operated throughout the entire length of each of the lines of said company, at least hourly each way, between midnight and 6 o'clock a. m. daily. The said company shall also, whenever and as often as may be required by the Director of Public Works, sprinkle between the outer rails of its tracks, including the space commonly known as the devil strip, on all streets and street intersections wherein any track on any of the lines of said company are laid, in a manner satisfactory to said director. In consideration of the grant made by this ordinance, said company agrees that all the terms and provisions of this section shall apply to and be a condition upon each and all of the grants heretofore made by the council under which the existing lines of street railroad now operated by the Cleveland City Railway Company have been constructed.

Sec. 6. This grant shall be in force until the 26th day of January, 1910, but the Council reserves and shall at all times have the right to authorize any other individual, company or corporation to jointly occupy and use, for street railway purposes, the whole or any part of the tracks and appliances, wires and poles herein authorized to be constructed on said extension, upon such terms and conditions as the Council may deem just and reasonable, unless such individual, company or corporation shall otherwise agree with said The Cleveland City Railway Company as to the terms and conditions of such use and occupation.

Sec. 7. The said company within ten days after the passage of this ordinance shall pay to the city the cost of publishing the same, and shall file with the city clerk an acceptance, in writing, of the rights and privileges herein granted, and therein agree to comply with and perform all the terms and conditions

upon which the same are granted, and as soon after such acceptance as the Board of Control may direct, said company shall commence the work of constructing said extension, and shall complete the same within four months thereafter; otherwise this ordinance shall be null and void.

Sec. 8. The failure or refusal of said company at any time to comply with and perform all and singular the terms and conditions of this ordinance, or the general ordinances of the city relating to street railroads, now or hereafter in force, shall work a forfeiture of this grant, and the rights and privileges hereby granted shall become null and void, upon the adoption of a resolution by the Council to that effect. Nothing in this ordinace contained shall be held to release said company from any of the conditions of any of the grants heretofore made by the city to any of said constituent companies.

Section 9. This ordinance shall take effect and be in force from and after its passage and legal publication.

Passed July 3, 1893.

ORDINANCE 3451.

NO. 3451—AN ORDINANCE granting permission to the Cleveland City Railway Company to extend its tracks from Superior street northerly in and along Ansel avenue to the city limits.

Section 1—Be it ordained by the Council of the City of Cleveland, that the Cleveland City Railway Company be and it is hereby granted permission to extend its tracks from Superior street northerly in and along Ansel avenue to the city limits, at the center of St. Clair street, with all necessary curves, switches, turnouts, poles, overhead wires, and other appliances for the proper construction of a double track railroad, and the operation thereof with electricity, and to construct and maintain said tracks, curves, switches, turnouts, and operate the same in connection with the other lines of street railway owned, with the same motive power as is used upon other portions of its lines, upon the following terms and conditions:

Sec. 2—The laying of such tracks and the erection of such poles and the placing thereon of the necessary wires and appliances shall be under the supervision and control of the Director of Public Works, and such poles shall be of such size, and shall be set at such places as shall be required by said Director. Should it become necessary in the prosecution of any work of said city that such poles shall be temporarily moved, such removal shall be made and such poles reset by said company at its own cost.

The running of cars upon any part of the lines of street railroad of said company may be suspended by the Board of Control for such period as may at any time be necessary on account of repairs of the street, or sewers, or the making of any public improvement.

Whenever it be necessary to have any tracks taken up for any of the purposes aforesaid, the same shall be taken up and relaid at the expense of said company.

Sec. 3—The said company shall at all times use such precautions for public safety as the Board of Control may from time to time require, and shall at all times defend, keep harmless, and indemnity the City of Cleveland from and against all lawful claims and demands for any injury to persons or property, costs and expenses to which the city may be subject, or made liable by any proceedings at law or in equity, or otherwise, growing out of this grant, or out of the exercise and enjoyment of the same by said company.

Sec. 4—Said company shall, at the time said tracks are constructed, pave the same and the space between its tracks, the devil strip, so called, with brick or stone pavement, to the satisfaction of the Board of Control, and shall keep said pavement in good repair during the continuance of this grant. Whenever the street is paved, in addition to the foregoing the said company shall pave or pay for paving, one foot on the outside of the outer rails of its tracks.

Said company shall issue to all passengers proper transfer checks to any and all passengers going to or from said ex-

tension, so that all passengers may have a continuous ride from said company's Superior or St. Clair street lines to and upon said extension or from said extension to and upon the Superior and St. Clair street lines of said company.

Sec. 5.—This grant shall terminate at the expiration of the other grants made to this company, to-wit: January 26, 1910.

Sec. 6—Said company shall, within ten days after the passage of this ordinance, pay to the city the cost of publishing the same, and shall file with the City Clerk an acceptance in writing of the rights and privileges herein granted, and therein agree to comply with and perform all of the terms and conditions upon which the same are granted, and shall build and complete this extension and have the same in operation on or before the 1st day of August, 1894.

Sec. 7—The failure or refusal of said company at any time to comply with or perform all and singular the terms and conditions of this ordinance and the general ordinances of the city relating to street railroads, now or hereafter in force, shall work in forfeiture of this grant, and the rights and privileges hereby granted shall become null and void upon the passage by this Council of the proper ordinance revoking said grants.

Sec. 8—This ordinance shall be in force from and after its passage and legal publication.

Passed March 12, 1894.

ORDINANCE 6920A.

ORDINANCE NO. 6920A—AN ORDINANCE granting permission to the Cleveland Electric Railway Company, its successors or assigns, to extend its street railroad from the junction of Miles avenue and Broadway to Woodland Hills avenue, and across Gates and McConnell streets.

Section 1—Be it ordained by the Council of the city of Cleveland, That the Cleveland Electric Railway Company, its successors or assigns, be and it is hereby granted permission to extend its line of railway, and to construct, maintain, and operate a double track street railway, with the necessary poles,

wires, and other electrical appliances, in and along Broadway, from its present tracks in Broadway at Miles avenue to the south line of Woodland Hills avenue and across Gates and McConnell streets, and provided that said railroad company shall place suitable lights of not less than five incandescent lights in each group at the crossing of Woodland Hills avenue, Miles avenue, and Gates street.

Sec. 2—The city hereby reserves the right to authorize the joint use of said tracks over said extension to any other company or companies, upon such terms as to compensation as may be agreed upon by such company or companies and the Cleveland Electric Railway Company, or in case of inability of such companies to agree, then upon such terms as may be fixed by the City Council.

Sec. 3—Said Cleveland Electric Railway Company shall grade, improve, and pave with dressed block Medina stone, with concrete filling, a strip sixteen feet in width in Broadway, from Miles avenue to Woodland Hills avenue, and all street intersections, and maintain the same in good condition, and to the acceptance of the Board of Control.

Sec. 4—No additional fare shall be charged by said company by reason of this extension, and further provided that no freight of any kind or description shall be hauled or carried over such extension or said company's main line or part or parts thereof without the consent of the Council.

Sec. 5—Said Cleveland Electric Railway Company shall begin the laying of the tracks herein authorized within nine months after the passage of this ordinance, and shall have the same completed within sixty days thereafter.

Sec. 6—This grant shall expire with the grant of its main line and extension as made July 1, 1889.

Sec. 7—The rights and privileges herein granted shall be subject to the provisions of the grant of said company's main Broadway line, and of the said ordinance of July 1, 1889, and of the general street railroad ordinances, so far as the same may be applicable, and not inconsistent herewith, and such

further and future regulations as may be ordered by the Council.

Sec. 8—Said company shall file with the City Clerk within thirty days after the passage of this ordinance a written acceptance of the same, and such an acceptance shall be deemed an agreement to perform all and singular the conditions and requirements of this ordinance; otherwise, this ordinance shall be null and void.

Sec. 9—This ordinance shall be in force from and after its passage and legal publication, and the payment to the City Treasurer of the cost of such publication.

Passed August 19, 1895.

ORDINANCE NO. 12186A—AN ORDINANCE granting the Cleveland Electric Railway Company permission to construct and operate an extension of its railway in Burton street and Rhodes avenue, from Storer avenue to Denison avenue.

Section 1. Be it ordained by the Council of the City of Cleveland, That the Celveland Electric Railway Company be and it is hereby granted permission to extend its double track street railroad on and along Burton street, from its present tracks at the intersection of said Burton street and Storer avenue, to Rhodes avenue, and on and along Rhodes avenue from Burton street to Denison avenue, with the necessary curves, Y's, and switches, and to maintain and operate said extension by means of electricity as a motive power, with the necessary poles, wires, and appliances, upon the following terms and conditions:

Sec. 2. All tracks laid by said company shall be of standard gauge, ninety-pound girder rails, or such improved rails as may hereafter be consented to by the Board of Control, with suitable gutters at all necesasry points so as to permit the free flow of water under the same, and on such grades as are now or hereafter may be established by the City Council, and subject at all times to be taken up and relaid whenever deemed

necessary by the City Council to grade said street, construct sewers, or lay water or gas pipes or wires therein at the expense of said company.

Sec. 3. The laying of said tracks and the erecting of said poles, and the placing thereon of the necessary wires and appliances shall be under the supervision and control of the Director of Public Works, and said poles shall be of such size and shall be set as such places as shall be required by said Director. Should it become necessary in the prosecution of any work by the city that such poles be temporarily moved, such removal shall be made and such poles be reset by said company at its own cost. The running of cars on any part of the lines of street railroad of said company may be suspended by the Board of Control for such period as may at any time be necessary on account of repairs of streets or sewers, or the making of any public improvement, and whenever it may be necessary to have any track taken up for any of the purposes aforesaid, the same shall be taken up and relaid at the expense of said company.

Sec. 4. The city hereby reserves the right to authorize the joint use of said tracks of said railway company herein described to any other company or companies, upon such terms as to compensation as may be agreed upon by said company or companies and the Cleveland Electric Railway Company, its successors or assigns, or in the case of the inability of said companies to agree upon any such terms as may be fixed by the Board of Control and City Council.

Sec. 5. Said company shall at the time of constructing said extension pave its tracks and the space between its tracks, including the space commonly known as the devil strip, also a space one foot in width on the outside of each outside rail, in said extension, with such pavement as may be required by the Board of Control, the same to be done under the direction and to the acceptance of the Director of Public Works; and said company shall keep in constant good order and repair sixteen

feet in width along the center of the roadway of said Burton street and Rhodes avenue, between the points aforesaid.

Sec. 6. Said company shall run through cars on said Burton street and Rhodes avenue in such numbers, at such intervals of time, and under such rules and regulations as the Council may from time to time require, and shall cause the said cars to stop at all street intersections at which any person may desire to leave or enter the same, and at such other places as the Council shall from time to time require. Night cars shall be operated by said company throughout the entire length of said extension at least hourly each way, between midnight and 6 o'clock a. m. daily, whenever required by the Council. Only the most improved motors and cars now or hereafter in use shall be used on said extension, and the same shall be equipped and furnished with such improvements, equipments, and appliances as the Council may deem proper for the safety, convenience, and comfort of passengers and the public.

All cars shall be properly lighted at all times between sunset and sunrise; shall be so heated as to maintain a temperature not lower than 60 degrees Fahrenheit therein at all times, and shall be supplied with such guards as shall securely enclose the tracks thereof. The said company shall, whenever and as often as may be required by the Director of Public Works, sprinkle between the outer rails of the track on said extension, including the space commonly known as the devil strip, in a manner satisfactory to said Director. Failing so to do, the city shall have the right to have said sprinkling done and the company shall pay the city the cost of the same.

Sec. 7. No additional fare shall be charged any passenger by reason of this extension, and said company shall not charge more than five cents fare each way for each passenger over the whole or any part of its line, and tickets at the rate of eleven for fifty cents and twenty-two for one dollar shall at all times be kept for sale by the conductors on all cars running on any portion of the tracks of this extension, each of which tickets shall be good for one fare on all cars running over the

tracks contained in this grant and extension, or any part of the same; and transfers shall be issued for said tickets as upon receipt of a cash fare or any other ticket of said company; and any passenger, upon the payment of fare upon the line of this extension, shall be entitled to be transferred, at the intersection of Burton street and Clark avenue, to any car operated upon the Clark avenue line of said company, and shall also be entitled to any and all such transfers to any other line or lines of said company, as passengers upon the Clark avenue and Pearl street line of said company are now or may hereafter be entitled to, and any passenger, upon the payment of fare upon the connecting line, shall be entitled to a transfer to this extension.

Sec. 8. Said railroad company, its successors or assigns, shall at all times hereafter save harmless and indemnify the City of Cleveland from any and all lawful claims and damages for injury to person or property and all costs and expenses to which said city may be subjected or made liable, by any proceedings at law or in equity, or otherwise growing out of the construction, use, operation, or maintenance of said railroad, or out of the granting of the privileges in this ordinance granted or by reason of the giving or granting of the authority or privilege hereby granted.

And it is understood and agreed that the City of Cleveland shall not be held liable to said company, its successors or assigns, for any damage resulting from the breakage of any sewer or water pipe or for any delay that may be caused by the construction of any sewer or laying of any water or gas pipe, or electrical conduit of wires, and the necessary repairing of the same, or for any delay or damages that may be caused by fire or otherwise.

All rights vested in the City Council or Board of Control in respect to the grading or improvement of streets, construction of sewers, culverts, gutters, and the laying of electrical conduits, water and gas pipes therein, are in no way to be impaired

or affected by any of the privileges granted to this company, its successors or assigns by virtue of this ordinance.

Sec. 9. And be it further ordained that the following specifications shall be required by the Council in the running of said company's cars thereon:

First—Cars driven in the same direction shall not approach each other within a distance of thirty feet; and the rate of speed of all cars shall be under the direction of the City Council at all times.

Second—The conductors and motormen of all cars shall keep a vigilant watch of all teams, carriages, persons on foot, and especially children on the track or moving toward it; and upon the first appearance of danger to such team or person, or other obstruction the car shall be stopped in the shortest time and space possible.

Third—Cars after sunset shall be provided with signal lights.

Sec. 10—The rights and privileges herein granted shall be subject to the provisions of the general street railway ordinances, or so much of the same as may be applicable and not inconsistent herewith and such further and future ordinances as the Council and Board of Control may prescribe.

Sec. 11—This grant shall be in force until the 13th day of July, A. D. 1913.

Sec. 12—The said company shall, within twenty days after the passage of this ordinance, pay to the city the cost of publishing the same, and shall file with the City Clerk an acceptance in writing of the rights and privileges herein granted and therein agree to comply with and perform all the terms and conditions upon which the same are granted, and as soon after such acceptance as the Board of Control may direct. Said company shall commence the work of constructing said extension and shall complete the same within four months thereafter, otherwise this ordinance shall be null and void.

Sec. 13—The failure or refusal of said company to comply with and perform all and singular the terms and conditions of

this ordinance, or the general ordinances of the city relating to street railroads now or hereafter in force shall, unless otherwise provided, work a forfeiture of this grant, and the rights and privileges hereby granted shall become null and void upon the passage of an ordinance to that effect, or in case said company shall fail to operate cars upon said extension for the period of twenty days after having begun operation this grant, together with all rights hereunder, shall cease and determine.

Sec. 14—This ordinance shall take effect and be in force from and after its passage and legal publication.

Passed April 12, 1897.

ORDINANCE 27124A

ORDINANCE NO. 27124-A—AN ORDINANCE granting to The Cleveland Electric Railway Company the right to extend and operate its double-track street railway on Euclid avenue, from Erie street easterly to a point about one hundred (100) feet west of Perry street.

Section 1—Be it ordained by the City Council of the City of Cleveland, That The Cleveland Electric Railway Company is hereby granted permission to extend and operate its double-track street railway, from its present track at the intersection of Euclid avenue and Erie street, easterly along said Euclid avenue to a point about one hundred (100) feet westerly of the westerly line of Perry street, with the right to construct and maintain the necessary double southerly curve to the southerly line of Euclid avenue, and to its private right of way, extending from the southerly line of Euclid avenue to the northerly line of Prospect street, also the right to cross Euclid alley in a direct line with its said private right of way and also the right to construct and maintain the necessary double curve to connect its said line and private right of way with its present double-track line in Prospect street, with the necessary connecting tracks and also poles and overhead wires, and to construct and maintain said extension and operate the same by means of electricity as a motive power upon the following terms and conditions:

Sec. 2—The laying of such tracks and the erection of such poles and the placing thereon of the necessary wires and appliances shall be under the supervision and control of the Director of Public Works of the City of Cleveland, and such poles shall be of such size and shall be set at such places as shall be required by said directors. Should it become necessary in the prosecution of any work by the city, or by the property owner in front of whose property the poles may be situated that such poles be temporarily moved, such removal shall be made, and such poles shall be reset by said company at its own cost. The running of cars on any part of said extension, may be suspended by the Board of Control for such period as may at any time be necessary on account of repairs to streets or sewers, or the making of any public improvements, and whenever it may be necessary to remove any tracks for any of the purposes aforesaid, the same shall be taken up and relaid at the expense of said company.

Sec. 3—The said company shall at all times use such precaution for the public safety as the City Council may from time to time require, and shall at all times defend, keep harmless and indemnify the City of Cleveland from and against all claims and demands for any injury to persons or property, costs and expense to which the city may be subjected, or made liable by any proceedings at law or in equity, or otherwise, growing out of this grant, or out of the exercise or enjoyment of the same by said company, and said company shall operate the said extension subject to such regulations as to use as are now in force on its lines on Euclid avenue, west of Erie street, and also subject to such general regulations and ordinances as may from time to time be enacted by said City Council, provided that said company shall continue to run on Prospect street as far west as Erie street at least each alternate car of each of its lines and branches now being operated on Prospect street.

Sec. 4—Upon the completion of the road upon said extension, said company shall pay into the City Treasury, to the

credit of such fund or funds as may be designated by the City Council, a sum of money equal to the present value of a strip of paving sixteen feet wide on said Euclid avenue for the entire length of said extension, and across said Euclid alley, and along said curves in Prospect street; said value of said strip of pavement shall be determined by the said Director of Public Works; and if said Euclid avenue or said Euclid alley or said Prospect street shall be re-paved at any time, during the life of this extension, the said Cleveland Electric Railway Company shall pay a sum equal to the cost of paving a strip sixteen feet wide along the entire line of said extension on said Euclid avenue and Prospect street and across said Euclid alley, and said company shall keep in constant order and repair a strip sixteen feet in width along the center of the roadway of said Euclid avenue for the entire length of its said extension and across said Euclid alley and on its curves in said Euclid avenue and Prospect street. And the said street railway company shall keep said strip of sixteen feet width along its line on Euclid avenue and Prospect street and across said Euclid alley free from dirt, refuse and snow at all times, and shall remove from the surface of said Euclid avenue and Prospect street and Euclid alley all surplus snow and dirt that may accumulate upon the sides of said streets, avenues and alley due to the cleaning of the said sixteen feet in width, and the said company shall keep the said Euclid avenue and Prospect street, between the curb lines and the crossing of the said Euclid alley for the whole length of said extension well and thoroughly sprinkled from April 1st to November 1st, of each year, and shall furnish, maintain, and keep lighted without cost to the city, a good and sufficient electric arc light at the intersection of its private right of way with the said Euclid avenue and Prospect street and the said Euclid alley, and shall perform all these requirements during the life of this grant.

Sec. 5—The said company within ten days after the passage of this ordinance shall pay to the city the cost of publi-

cation of the same, and shall file with the city clerk, an acceptance in writing of the rights and privileges herein granted, and shall therein agree to comply with and perform all the terms and conditions upon which the same are granted, and as soon after such acceptance as the Board of Control may direct, said company shall commence the work of constructing said extension, and shall complete the same within four months thereafter, otherwise this ordinance shall be null and void.

Sec. 6—The rights and privileges granted under this ordinance shall terminate when the rights of the said Cleveland Electric Railway Company on Euclid avenue west of Erie street, granted under previous ordinances, shall terminate, after which date this ordinance shall not be in force. The Council reserves to itself the right to grant to any person or persons, company or corporation, a joint use for street railway purposes of the tracks and appliances, trolley wires, poles, electricity, etc., herein granted, upon such terms and conditions as said Council shall deem just and reasonable, in case of the failure of said The Cleveland Electric Railway Company, and said person or persons, company or corporation, to come to an agreement.

Sec. 7—This ordinance shall take effect from and after its passage and legal publication.

Passed, May 14, 1900.

ORDINANCE 30431

ORDINANCE NO. 30431 — AN ORDINANCE granting permission to the Cleveland City Railway Company to extend its tracks from Hough avenue southerly along Ansel avenue for a distance of two hundred and twenty (220) feet, with three curves therefrom to the east side of Ansel avenue.

Whereas, The Cleveland City Railway Company has the consent of the abutting property on Ansel avenue, from Hough avenue to a point 220 feet southerly therefrom, for the

construction of a track in said Ansel avenue between the points aforesaid; now therefore,

Section 1—Be it ordained by the Council of the City of Cleveland, That the Cleveland City Railway Company is hereby granted permission to extend a single track in Ansel avenue about two hundred and twenty (220) feet southerly from Hough avenue and construct three spurs or curves from said single track to the east line of Ansel avenue, with the necessary poles and overhead wires, and to construct and maintain said extension, operate the same by means of electricity as a motive power on the following terms and conditions:

Sec. 2—That the laying of such tracks and the erection of such poles, and the placing thereon of the necessary wires and appliances shall be under the supervision and control of the Director of Public Works, and such poles shall be of such size and shall be set at such places as shall be required by said director. Should it become necessary in the prosecution of any work by the city such poles and tracks be temporarily moved, such removal shall be made, and such poles shall be reset by said company at its own cost. The running of cars on any part of the lines, of street railroads of said company may be suspended by the Board of Control for such a period as may at any time be necessary on account of building or repair of said street, or sewer, or the making of any public improvements and said company shall curb and pave with paving brick the entire roadway of Ansel avenue, from Hough avenue to two hundred and twenty (220) feet southerly, including the tracks and the space between same, and keep in repair at its own expense to the satisfaction of the Director of Public Works, the said pavement in the tracks and one foot outside of each rail, including the space between the tracks, and whenever it may be necessary to have any track taken up for any of the purposes aforesaid, the same shall be taken up and relaid at the expense of said company.

Sec. 3—This grant shall be in force until the 26th day of January, 1910, but the Council reserves the right and shall at all times have the right to authorize any other individual company or corporation to jointly occupy and use for street railway purposes the whole or any part of the track and appliances, wires and poles, herein authorized to be constructed on said extension, on such terms and conditions as the Council may deem just and reasonable, unless such individual, company or corporation, shall otherwise agree with the said Cleveland City Railway Company as to terms and conditions of such use and occupation.

Sec. 4—That the said company within ten (10) days after the passage of this ordinance shall pay to the city the cost of publishing the same, and shall file with the City Clerk, an acceptance in writing, of the rights and privileges herein granted and therein agree to comply with and perform all the terms and conditions upon which the same are granted, and as soon after said acceptance as the Board of Control may direct, said company shall commence the work of constructing said extension, and shall complete the same within sixty (60) days thereafter, otherwise this ordinance shall be null and void.

Sec. 5—The failure or refusal of said company at any time to comply with and perform all and singular the terms and conditions of this ordinance or the general ordinances of the City relating to street railroads, now or hereafter in force, shall work the forfeiture of this grant, and the rights and privileges hereby granted shall become null and void, upon the adoption of a resolution by the Council to that effect. Nothing in this ordinance contained, shall be held to release said company from any of the conditions or any of the grants heretofore made by the city.

Sec. 6—That this ordinance shall take effect and be in force from and after its passage and legal publication.

Passed, November 12, 1900.

ORDINANCE 29868

ORDINANCE NO. 29868—AN ORDINANCE granting to the Cleveland Electric Railway Company the right to extend, maintain and operate its present street railway system by a single track street railway extension on Fremont street, between Tod street and Skinner avenue, and on Skinner avenue, between Fremont street and Fleet street, in said city.

Section 1—Be it ordained by the City Council of the City of Cleveland, that The Cleveland Electric Railway Company is hereby granted permission to extend, maintain and operate its present street railway system by a single track street railway extension from its present tracks at the intersection of Tod and Fremont streets, westerly along said Fremont street to the intersection of said Fremont street and Skinner avenue; thence northerly along said Skinner avenue to the intersection of Skinner avenue and Fleet street, connecting with said company's tracks at the junction of said Fleet street and said Skinner avenue; together with all the necessary wires, poles and appliances, and to construct and maintain said extension and operate the same by means of electricity as a motive power, upon the following terms and conditions:

Sec. 2—The laying of such tracks and the erection of such poles and the placing thereon of the necessary wires and appliances shall be under the supervision and control of the Director of Public Works of the City of Cleveland, and such poles shall be of such size and shall be set at such places as shall be required by said Director. Should it become necessary in the prosecution of any work by the city or by the property owner in front of whose property the poles may be situated, that such poles be temporarily moved, or moved to new location, such removal shall be made, and such poles shall be reset by said company at its own cost. The running of cars on any part of said extension may be suspended by the Board of Control for such period as may at any time be necessary on account of repairs to streets or sewers, or the making of any public inprovements, and whenever it may be necessary to re-

move any tracks for any of the purposes aforesaid, the same shall be taken up and relaid at the expense of said company.

Sec. 3—The said company shall at all times use such precaution for the public safety as the City Council may from time to time require, and shall at all times defend, keep harmless and indemnify the City of Cleveland from and against all claims and demands for any injury to persons or property, cost and expense to which the city may be subjected, or made liable by any proceeding at law or in equity, or otherwise, growing out of this grant, or out of the exercise or enjoyment of the same by said company, and said company shall operate the said extension subject to such regulations as to use as are now in force or may hereafter be in force in respect to the line of street railway to which this is an extension, and subject to all such general regulations and ordinances as may from time to time be enacted by the City Council.

Sec. 4—If at any time said Fremont street or said Skinner avenue shall be paved or repaired during the life of this extension, the said The Cleveland Electric Railway Company shall pay to the City of Cleveland a sum equal to the cost of paving a strip eight feet wide along the entire length of said extension on said streets, with such material and in such manner as the said city may direct, and the said street railway company shall keep said strip eight feet in width along said extension on said street at all times free from dirt, refuse and snow, and maintain and keep the same in repair at such times and in such manner as the city may direct.

Sec. 5—The said The Cleveland Electric Railway Company, in consideration of the rights and privileges herein granted, shall remove one of its tracks on Fleet street, between Skinner avenue and Tod street, and on Tod street between Fleet street and Fremont street, place the remaining track in the middle of the streets, and pave same, as provided for in Section 4, and shall hereafter operate a single track street railway, and shall not operate a double track street railway on said Fleet street, from Skinner avenue to Tod street, and on said Tod

street between said Fleet street and Fremont street, during the term of this ordinance.

Sec. 6—The said The Cleveland Electric Railway Company shall, within ten days after the passage of this ordinance, pay to the city the cost of publication of the same, and shall file with the City Clerk an acceptance in writing, of the rights and privileges herein granted, and shall therein agree to comply with and perform all the terms and conditions upon which the same are granted, and as soon after the acceptance as the Board of Control may direct, said company shall commence the work of constructing said extension, and shall complete the same within sixty days thereafter, otherwise this ordinance shall be null and void.

Sec. 7—The rights herein granted shall terminate with the termination of the rights of said The Cleveland Electric Railway Company to operate the lines of street railway to which this ordinance provides an extension.

Sec. 8—All ordinances or parts of ordinances or grants heretofore made to the said The Cleveland Electric Railway Company, insofar as they are inconsistent with the terms of this ordinance, are hereby repealed.

Sec. 9—This ordinance shall take effect and be in force from and after its passage and legal publication.

Passed March 25, 1901.

ORDINANCE 29085A.

ORDINANCE NO. 29085A.—AN ORDINANCE to authorize the Cleveland City Railway Company to extend its lines of street railway by a double track, from the intersection of Woodland avenue and Woodland Hills avenue southerly in Woodland Hills avenue to the intersection of Woodland Hills avenue and Kinsman street.

Section 1—Be it ordained by the Council of the City of Cleveland, That The Cleveland City Railway be and it is hereby granted the right to extend its double-track street railway from its tracks at the intersection of Woodland avenue

and Woodland Hills avenue southerly in and along Woodland Hills avenue to Kinsman street, and to connect with its tracks at the intersection of Woodland Hills avenue and Kinsman street, together with the right to it, its successors and assigns, to construct, maintain and operate by electricity the said extension; together with all necessary poles, wires, sidetracks, turnouts, switches, Y-tracks and other equipments and appliances which may be necessary to properly construct, maintain and operate such extension as a double-track electric railway, in connection with its lines now existing in Woodland avenue and Kinsman street.

Sec. 2—The laying of such tracks and the erection of such poles and the placing thereon of the necessary wires and appliances, shall be under the supervision and control of the Director of Public Works, and such poles shall be of such sizes and shall be set in such places and in such manner as shall be required by said Director. Should it become necessary in the prosecution of any public work of said city, that such poles should be temporarily moved, such removal shall be made and such poles reset by said company at its own cost and expense; the running of cars upon any portion of the said extension may be suspended by the Director of Public Works, and the tracks ordered removed for the purpose of constructing or repairing pavements, sewers or drains, or other work upon the said streets, and such removal and the replacing of the said tracks and the returning of the streets to their original condition shall be done by said company at its own cost and expense.

Sec. 3—The said company shall at all times use such precautions for the public safety as the Board of Control may from time to time require, and shall at all times defend, keep harmless and indemnify the City of Cleveland from and against all lawful claims and demands for any injury to persons and property, costs and expenses to which the city may be subjected or made liable by any proceedings at law, in

equity, or otherwise growing out of this grant, or out of the exercise and enjoyment of the same by said company.

Sec. 4—Whenever the said city shall cause the said Woodland Hills avenue, between Woodland avenue and Kinsman street, to be paved, the said company shall pave or pay the cost of paving, as the Council may elect, the entire space between the outer rails of both tracks, including the space between the two tracks, and a strip one foot in width outside the outer rail of each track, with such kind and quality of paving as the Board of Control shall determine, and at least as good as the balance of the paving on said street, and until such time of paving said street by said city, the said company shall pave said above mentioned portion of said street with such kind of pavement as the Board of Control shall direct. The said company shall at all times keep such pavement in good condition satisfactory to the Director of Public Works.

Sec. 5—That the city reserves the right to grant the joint use of all or any portion of the tracks laid or used in said extension to any company or companies that may be hereafter organized, upon such terms as to compensation as may be mutually agreed upon between company or companies and the said The Cleveland City Railway Company, its successors and assigns, or as the said City Council shall deem to be just and equitable in the event of said companies failing to agree.

Sec. 6—This grant is made subject to the conditions and requirements of the grant of the said The Cleveland City Railway Company of the right to construct and operate its street railway lines in Woodland avenue, and this grant, and all the rights and privileges herein granted, shall terminate at the same date as the rights and privileges granted to said company. for its lines in Woodland avenue aforesaid.

Sec. 7—This ordinance shall be in force and effect from and after its passage and legal publication, and the payment of the cost and expense of said publication, and the acceptance in writing of this ordinance by said company.

Passed April 2, 1901. D. B. STEUER,
President of the Council.
HOWARD H. BURGESS, City Clerk.
Approved by the Mayor April 2, 1901.

ORDINANCE 29086 A

ORDINANCE NO. 29086A.—AN ORDINANCE to authorize the Cleveland City Railway Company to extend its line of street railway by a double track from the intersection of Detroit street and Lake avenue northwesterly in and along Lake avenue to, through and under the railroad of the Lake Shore & Michigan Southern Railway Company, to a point in said Lake avenue 400 feet westerly from the westerly line of the right of way of the said L. S. & M. S. Railway Company.

Sec. 1—Be it ordained by the Council of the City of Cleveland, That The Cleveland City Railway Company be and it is hereby granted the right to extend its double track street railway from its present traks at the intersection of Detroit street and Lake avenue northwesterly in and along Lake to, through and under the railroad of the Lake Shore & Michigan Southern Railway Company to a point in said Lake avenue 400 feet westerly from the westerly line of the right of way of said The Lake Shore & Michigan Southern Railway Company, measured along the center of the said Lake avenue, thence by a double track curve southerly to the southerly line of the said Lake avenue, together with the right to it, its successors and assigns, to construct, maintain and operate by electricity the said extension, together with all necessary poles, wires, side tracks, turn-outs, switches, Y tracks and other equipments and appliances which may be necessary to properly construct, maintain and operate such extension as a double track street railway, in connection with its existing line in Detroit street.

Sec. 2—The laying of such tracks and the erection of such poles and the placing thereon of the necessary wires and appliances, shall be under the direction and control of the Director of Public Works, and such poles shall be of such sizes and shall be set in such places and such manner as shall be required by said Director. Should it become necessary in the prosecution of any public work of said city, that such poles should be temporarily moved, or that such tracks should be taken up, or that

the running of cars should be suspended, then upon the order of the said Director of Public Works, the said company will remove said poles or tracks, or suspend the running of cars, and at the completion of the said public work shall replace the said poles and tracks, and return the street to its original condition without cost to the city, and to the entire satisfaction of the said Director of Public Works.

Sec. 3—The said company shall at all times use such precautions for the public safety as the Board of Control may from time to time require, and shall at all times defend, keep harmless and indemnify the City of Cleveland from and against all lawful claims and demands for any injury to persons and property, costs and expenses to which the city may be subjected or made liable by any proceedings of law or in equity, or otherwise growing out of this grant, or out of the exercise and enjoyment of the same by said company.

Sec. 4—Whenever the said city shall cause the said Lake avenue, between Detroit street and the point of termination of the above granted extension, to be paved, the said company shall pave or pay the cost of paving, as the Council may elect, the entire space between the outer rails of both tracks, including the space between the tracks, and a strip one foot in width outside the outer rail of each track, with such material and in such manner as the Board of Control may determine, and of at least as good quality as the balance of the street, and until such time of paving such street by said city, the said company shall pave said above mentioned portion of said street with such pavement as the Board of Control shall direct. The said company shall at all times keep said pavement in good condition satisfactory to the Director of Public Works.

Sec. 5—This grant is made subject to the conditions and requirements of the grant to the said The Cleveland City Railway Company of the right to construct and operate its street railway lines in Detroit street, and this right, and all the rights and privileges herein granted shall terminate at the same date

as the rights and privileges granted to said company for its lines in Detroit street aforesaid.

Sec. 6—This ordinance shall be in force and effect and after its passage and legal publication, and the payment of the cost and expense of said publication, and the acceptance in writing of this ordinance by said company.

Passed April 2, 1901.

ORDINANCE 31902.

ORDINANCE NO. 31902A.—AN ORDINANCE to extend the tracks of the Cleveland Electric Railway Company on Bank street.

Section 1. Be it ordained by the Council of the City of Cleveland, That the Cleveland Electric Railway Company is hereby authorized and empowered to extend its double track railroad in Bank street from the intersection of Lake street and Bank street, northerly along said Bank street to the property of the Union Depot Company, lying west and south of Bank street and extending through to Water street, to connect with the tracks of the Cleveland City Railway Company in Water street, and place thereon the necessary tracks, curves, connections, poles and overhead wires to connect such extension with the tracks now in Bank street and Water street by passing over said Depot Company's land, and to enable it to operate its cars over such extension by electricity or other motive power as may be directed by the city council of the City of Cleveland.

Sec. 2—The laying of such tracks and the erection of such poles and wires and the operation of cars thereon shall in all respects be in accordance with the terms and conditions contained in an ordinance passed on July 16th, 1886, by which the right to construct tracks and operate a street railway in Bank street from Superior street to Lake street was granted, and all rights herein granted shall terminate on March 22, 1905, or such earlier time as the said company may for any reason abandon the use of the tracks along the private right-of-way between Bank street and Water street.

Sec. 3—The city reserves to itself and also reserves the right to grant to any other individual, company or corporation the right to jointly occupy and use for street railway purposes the whole or any part of the tracks and appliances wires and poles, herein authorized to be constructed in said extension, including at least two tracks with all the appliances on the private right-of-way lying between Bank street and Water street, upon such terms and conditions as the council may deem just and reasonable, unless such individual, company or corporation shall otherwise agree with The Cleveland Electric Railway Company as to the terms and conditions of such use and occupation.

Sec. 4—The said company within ten days after the passage of this ordinance shall pay to the city the cost of publishing the same, and shall file with the City Clerk an acceptance in writing of the rights and privileges herein granted, and therein agree to comply with and perform all the terms and conditions upon which the same are granted, and as soon after such acceptance as the Board of Control may direct, said company shall commence the work of constructing said extension and shall complete the same within four months thereafter, otherwise this ordinance shall be null and void.

Sec. 5—This ordinance shall take effect and be in force from and after its passage and legal publication.

Passed June 24, 1901.

ORDINANCE 32402.

ORDINANCE NO. 32402A—AN ORDINANCE granting the Cleveland Electric Railway the right to etexnd and operate its double track street railroad, from Seneca street through Michigan street to Ontario street.

Sec. 1—Be it ordained by the Council of the City of Cleveland, That the Cleveland Electric Railway Co. is hereby authorized to extend the tracks of the double track street railway of its Seneca street and Scranton avenue line from the intersection of Seneca street and Michigan street to Ontario street, together with the necessary tracks and curves to connect said ex-

tension with the tracks now existing in the streets named, and the necessary poles and wires, and to operate its street railway over such extension by means of electricity or other motive power that may be approved by the Council.

Sec. 2—Said company shall construct the said tracks and appliances in such manner as the Board of Control may direct, under the supervision of the City Engineer and to his satisfaction.

Sec. 3—This grant is made subject to all ordinances of the City of Cleveland, now in force, or which may hereafter be in force, providing for the construction, operation and government of street railways, except that the said street railway company shall be relieved from the provisions of Sec. 871 of the Revised Ordinances, relating to paying the estimated value of certain paving.

Sec. 4—This grant shall expire March 22nd, 1905, unless it be sooner terminated by the City, and the City reserves to itself the right to terminate it at any time, and shall at all times reserve the right to itself, and also the right to authorize any other individual, company or corporation to jointly occupy and use, for street railway purposes, the whole or any part of the tracks and appliances, wires and poles herein authorized to be constructed on said extension. and on Seneca street, between the south line of Michigan street and the center line of Superior street, upon such terms and conditions as the City may deem just and reasonable, unless such individual, company or corporation shall otherwise agree with said the Cleveland Electric Railway Company as to the terms and conditions of such use and occupation.

Sec. 5—Said company shall remove its turn table in Seneca street, leaving said street, in good condition, and shall extend its tracks in said Seneca street northerly connecting the same with two of the tracks in Superior street, the same to be done under the supervision and to the satisfaction of the City Engineer.

Sec. 6—Said company shall within ten days after the passage of this ordinance pay to the City the cost of publishing the same, and file with the City Clerk an acceptance in writing of the rights and privileges herein granted, and this grant shall become void if said company shall fail to exercise the privileges herein granted within four months from the passage hereof; and this grant shall also become void if said company shall fail on or before the 1st day of October, 1901, to repave with Medina block stone pavement the strip sixteen feet in width on and along its Cedar avenue line wherever on Cedar avenue or Perry street cobble stone pavement now exists.

This ordinance shall take effect and be in force from and after its passage and legal publication and the acceptance of the terms thereof by said Company.

Passed July 1, 1901.

ORDINANCE 33573.

ORDINANCE No. 33573.—AN ORDINANCE—To grant the Cleveland Electric Railway Company the right to extend and operate a single track street railroad from Euclid avenue along the easterly line of the Public square to Superior street and the right to use the tracks of the Cleveland City Railway from the westerly side of the Public square to Erie street.

Section 1. Be it ordained by the Council of the City of Cleveland, That the Cleveland Electric Railway Company be and is hereby granted permission to construct the following extension of its existing double track street railroad, to-wit:

Beginning at the intersection of Euclid avenue with the easterly side of the Public square, thence northerly by single track along the easterly side of the Public square to Superior street and to connect with the existing tracks in Superior street at that point, together with the necessary curves and connecting tracks, poles and wires, and the said The Cleveland Electric Railway Company is hereby authorized to use the tracks of the Cleveland City Railway Company now ex-

isting in Superior street in the Public square and in Superior street from the Public square to the intersection of Superior street with Erie street, and to connect the tracks of the said The Cleveland Electric Railway Company on Erie street with the extsting tracks on Superior street at the intersection of said Erie street and Superior street, together with the necessary curves, connecting tracks, poles and wires, and to operate its street railway over such extension by means of electricity or other motive power that may be approved by the council.

Sec. 2. Said company shall use such rail and shall construct the said tracks and appliances in such manner as the Board of Control may direct, under the supervision of the city Engineer and to his satisfaction.

Sec. 3. This grant is made subject to all ordinances of the City of Cleveland now in force, or which may hereafter be in force, providing for the construction, operation and government of street railways, the said company, however, to pay for seventeen (17) feet of paving if it be allowed to lay its tracks five (5) feet apart, except that the said street railway company shall be relieved from the provisions of Sec. 871 of the Revised Ordinances, related to paying the estimated value of certain paving.

Sec. 4. This grant shall expire on March 22, 1905, unless it be sooner terminated by the City, and the City reserves to itself the right to terminate it at any time, and shall at all times reserve the right to itself, and also the right to authorize any other individual, company or corporation to jointnly occupy and use, for street railway purposes, the whole or any part of the tracks and appliances, wires and poles herein authorized to be constructed on said extension, upon such terms and conditions as the City may deem just and reasonable, unless such individual, company or corporation shall otherwise agree with the said The Cleveland Electric Railway Company as to the terms and conditions of such use and occupation.

Sec. 5. Said Company shall within ten days after the passage of this ordinance pay to the City the cost of publishing the same, and file with the City Clerk an acceptance in writing of the rights and privileges herein granted and therein agree to comply with and perform all the terms and conditions upon which the same are granted, and, as soon after such acceptance as the Board of Control may direct, said company shall commence the work of constructing said extension, and shall complete the same within four months thereafter; otherwise this ordinance shall be null and void.

Sec. 6. This ordinance shall take effect and be in force from and after its passage and legal publication.

Passed Aug. 5, 1901.

ORDINANCE 33136—A.

ORDINANCE NO. 33136A.—AN ORDINANCE to permit the Cleveland Electric Railway Company to Construct a single track extension of its street railway in Bolivar street and Eagle street, connecting the same with existing tracks in Erie street and with tracks on private property between said Bolivar and Erie street.

Section 1. Be it ordained by the Council of the City of Cleveland. That the Cleveland Electric Railway Company be and it hereby is authorized to extend and operate a single track street railway in Bolivar street and Eagle street, connecting the same with its existing tracks in Erie street by single track Y's, thence running westerly on said street and entering certain private property by a single track a single curve on each of said streets at points respectively distant not more than two hundred and fifty feet west of the west line of said Erie street and to operate said extension in connection with the tracks now existing and such tracks as may be constructed on said private property, by means of electricity or such other motive power as may hereafter be approved by the Council.

Sec. 2. Said company shall construct the said tracks and appliances in such manner as the Board of Control may direct,

under the supervision of the City Engineer and to his satisfaction.

Sec. 3. This grant is made subject to all ordinances of the City of Cleveland, now in force, or which may hereafter be in force, providing for the construction, operation and government of street railways, except that the said street railway company shall be relieved from the provisions of Sec. 871 of the Revised Ordinances, relating to paying the estimated value of certain paving.

Sec. 4. This grant shall expire March 22, 1905, unless it be sooner terminated by the City, and the City reserves to itself the right to terminate it at any time, and shall at all times reserve the right to itself, and also the right to authorize any other individual company or corporation to jointly occupy and use for street railway purposes, the whole or any part of the tracks and appliances, wires and poles herein authorized to be constructed on said extension, upon such terms and conditions as the City may deem just and reasonable, unless such individual, company or corporation shall otherwise agree with said The Cleveland Electric Railway Company, as to the terms and conditions of such use and occupation.

Sec. 5. The said company shall within ten days after the passage of this ordinance pay to the City Clerk the cost of publishing the same, and shall file with the City Clerk an acceptance in writing of the rights and privileges herein granted and therein agree to comply with and perform all the terms and conditions upon which the same are granted, and as soon after such acceptance as the Board of Control may direct, said company shall commence the work of constructing said extension, and shall complete the same within six months after the passage of this ordinance; otherwise this ordinance shall be null and void.

Sec. 6. This ordinance shall take effect and be in force from and after its passage and legal publication.

Passed Jan. 13, 1902.

ORDINANCE 38167.

ORDINANCE NO. 38167—AN ORDINANCE to grant to The Cleveland Electric Railway Company the right to extend and operate its double track street railroad on Erie street, from Euclid avenue to St. Clair street, and from Scovill avenue to Woodland avenue.

Section 1. Be it ordained by the Council of the City of Cleveland Electric Railway Company, its successors and assigns are hereby authorized to extend and operate said company's double track street railroad in and along Erie street, from Euclid avenue to St. Clair street, and from Scovill avenue to Woodland avenue, together with all tracks and curves necessary to connect said extensions with the present tracks of said company in Euclid avenue and Scovill avenue, and with the tracks of The Cleveland City Railway Company in Woodland avenue and Superior street, and all necessary poles and wires, and to operate cars over such extensions by means of electricity, or other motive power that may be approved by the council; provided that they must use the existing tracks of The Cleveland City Railway Company between Superior street and St. Clair street, upon terms to be fixed by the Council, if said companies are unable to agree upon terms.

Sec. 2. Said company shall construct the said tracks and appliances in such manner as the Board of Control may direct, under the supervision of the City Engineer, and to his satisfaction.

Sec. 3. This grant is made subject to all ordinances of the City of Cleveland, now in force or which may hereafter be in force, providing for the construction, operation and government of street railroads, except that said company shall be relieved from the provisions of Section 871 of the Revised Ordinances, relating to paying the estimated value of certain paving.

Sec. 4. This grant shall expire March 22, 1905, and the City reserves the right to itself, and also the right to author-

ize any other individual, company or corporation to jointly occupy or use the whole or any part of the tracks and appliances, poles, wires, and current herein authorized to be constructed upon said extensions upon such terms and conditions as the City may deem just and reasonable, unless such individual, company or corporation shall otherwise agree with the said The Cleveland Electric Railway Company as to the terms and conditions of such use and occupation.

Sec. 5. Said Company shall, within ten days after the passage of this ordinance, pay to the City the cost of publishing the same, and file with the City Clerk an acceptance in writing of the rights and privileges herein granted, and this grant shall become void if said company shall fail to exercise the privileges herein granted within six months from the passage of this ordinance.

Sec. 6. This ordinance shall take effect and be in force from and fater its passage and legal publication, and the acceptance of the terms thereof by said company.

Passed June 23, 1902.

RECORD IN STATE VS. EAST CLEVELAND RAILROAD CO.

On the 28th of January, 1888, there was filled in the Circuit Court of Cuyahoga County, State of Ohio, a quo warranto petition, and afterwards, to-wit, on the 23rd of April,

1888, an amended petition was filed in said cause, which is in words and figures following:

"IN THE CIRCUIT COURT

"State of Ohio
Cuyahoga County

AMENDED PETITION
IN QUO WARRANTO
THE STATE OF OHIO,
on the relation of
Alexander Hadden, Prosecuting Attorney of
Cuyahoga Co., Ohio,
Plaintiff,

vs.

THE EAST CLEVELAND RAILROAD COMPANY,
Defendant.

Now comes Alexander Hadden, by leave of court, and for his amended petition says that he is the duly elected, qualified and acting prosecuting attorney of Cuyahoga County, State of Ohio. He says that the East Cleveland Railroad Company, defendant, is a corporation duly organized under the laws of the State of Ohio. That the City of Cleveland is a city of the second class, of a first grade in said State, and that Garden street is a public street in said city. The East Cleveland Railroad Company claims, holds, and exercises the privilege, franchise and right of maintaining and operating a street railway in and upon said Garden street, being Brownell street in the west and Willson avenue on the east, for the transportation of passengers for hire, in contravention of law. By an ordinance of said city, which was passed and took effect on the 14th day of January, A. D., 1868, said franchise, privilege and right was granted to the defendant for the term of twenty years from said date, and

no longer. Immediately upon the passage of said ordinance the defendant accepted said grant.

On the 22d day of March, A. D. 1880, the council of said city passed an ordinance in the following words:

> "AN ORDINANCE to permit the East Cleveland Railroad Company to extend the Garden street branch of its railway.
>
> "Section 1. Be it ordained by the City Council of the city of Cleveland that the East Cleveland Railroad Company be and it is hereby authorized and empowered to extend the Garden street branch of its railway from the present track at the intersection of Baden avenue and Quincy street in an easterly direction on and along said Quincy street to the intersection of Lincoln avenue, and to equip and operate the said extension and its Garden street branch for the period of twenty-five years from and after the passage of this ordinance; but with the express condition that no increase of fare shall be charged by said company on any part of its said branch, or of its main line, or of said extension. This grant is made subject to all ordinances of said City Council now in force or which may hereafter be duly passed regulating street railroads.
>
> "Sec. 2. This ordinance shall take effect and be in force from and after the date of its passage and legal publication."

Subsequently to January 14, 1868, said defendant was by said city permitted to and did extend its railroad from said Willson avenue eastwardly to said intersection of Baden avenue and Quincy street, but no part of either of said extensions are between Brownell street on the west and said Willson avenue on the east, but are both wholly easterly from said Willson avenue.

Prior to the passage of said ordinance of March 22, 1880, none of the owners of lots abounding and abutting on Garden

street, between Brownell street on west and Willson avenue on the east, have consent to any renewal of the grant for a street railway on the said part of said street which is a distance along said Garden street of nearly two miles, nor was any public notice of any application therefor given by the clerk of said city.

He further says that he is informed and believes and so avers the fact to be that defendant claims the right to have and exercise the right, franchise and privilege aforesaid, under and by virtue or said ordinance of March 22, 1880, as being a renewal of the grant in said ordinance of January 14, 1868, and by virtue of no other grant, permission, or authority whatever.

WHEREFORE relator prays the advice and judgement of the court, that the defendant, the East Cleveland Railroad Company, be required to come before the court and answer unto the State of Ohio by what warrant it claims, holds and exercises the privilege, franchise and right aforesaid, and that it be decreed and adjudged that the Eact Cleveland Railroad Company unlawfully claims, holds and exercises the privilege, franchise and right aforesaid, and that it be wholly ousted and excluded therefrom, and that the relator recover his costs.

ALEANDER HADDEN,
Prosecuting Att'y of Cuyahoga Co., Ohio.

THE STATE OF OHIO
Cuyahoga County.

Alexander Hadden, being first duly sworn, says that he is the relator in the above entitled action, and that the facts set forth in the foregoing amended petition are true as he verily believes.

Sworn to before me and subscribed in my presence by the said Alexander Hadden this 23rd day of April, 1888.

M. S. HINMAN,
Deputy Clerk."

That afterward on the 9th of January, 1889, the following judgment was rendered in said cause:

"January 9, 1889. To court: The demurrer to the amended petition being sustained, and the relator not desiring to amend or plead any further, now therefore it is considered and adjudged that said defendant go hence without day and recover of said relator its costs herein. Relator excepts to the rendering of said judgment. Jour. 2-38."

The opinion of the court in said case is that reported in 6 C. C. Rep. p. 318 under the title "Ex rel Hadden v. The East Cleveland Railroad Co." and this judgment was afterwards affirmed without report by the Supreme Court of Ohio. See 27 W. L. B. 171.

Supreme Court of the United States.

Nos. 197 and 321.—October Term, 1906.

197	The Cleveland Electric Railway Company, Appellant, *vs.* The City of Cleveland and The Forest City Railway Company.	Appeals from the Circuit Court of the United States for the Northern District of Ohio.
321	The City of Cleveland and The Forest City Railway Company, Appellants, *vs.* The Cleveland Electric Railway Company.	

[January 7, 1907.]

This bill was filed in the United States Circuit Court for the Northern District of Ohio on the 21st of March, 1905, against the City of Cleveland and The Forest City Railway Company, for the purpose of obtaining an injunction to restrain the city from carrying out a certain ordinance relating to the Garden street branch of complainant's railroad, passed by the city council January 11, 1904, on the ground that it was null and void, because it impaired the obligations of various contracts which the complainant alleged had been entered into between the complainant and the city, providing for the use until either July 13, 1913, or July 1, 1914, of certain streets by the railroad owned by the complainant, and known as the Garden street or Central avenue branch, and hereafter called the Garden street branch. The ordinance granted to The Forest City Railway Company (a stranger to the original grants) the renewal right to maintain and operate the existing street railroads through the streets named therein, which were the same streets theretofore granted to the Garden street railroad. The right was granted upon condition that the grantee should pay to the owners of the poles and other property being in the streets an amount to be agreed upon therefor, or such sum as should be finally adjudicated upon by a court. A temporary restraining order was granted. The defendants made separate answers, denying the existence of any contract between the complainant and the city upon the subject of the Garden street branch subsequent to March 22, 1905, and The Forest City Railway Company claimed under the ordinance of January, 1904, the right to take possession of such Garden street branch after March, 1905, and to use the tracks of the complain-

ant's railroad. The case was heard upon the pleadings and various ordinances and resolutions of the council of the city.

After hearing, a decree was made by the Circuit Court, (137 Fed. 111,) which decreed that the right claimed by the complainant to operate its Garden street branch railroad in the streets named in the bill expired on the 22d day of March, 1905. It was also decreed that the ordinance of January 11, 1904, was inoperative, so far as it assumed to confer upon the defendant, The Forest City Railway Company, any legal right to take the tracks, poles, wires and appliances erected and maintained by the complainant in the streets, because such ordinance authorized the taking of the property of complainant without due process of law. The railroad company, therefore, was enjoined from interfering with the complainant in the peaceable possession of the property mentioned, and the city was enjoined from attempting in any manner, by virtue of the ordinance, to put the defendant, The Forest City Railway Company, into possession of the same. From the decree the complainant, and both of the defendants appealed directly to this court, as involving questions arising under the Constitution of the United States. The complainant's appeal is No. 197, and is from that portion of the decree which adjudges that the right of the complainant to maintain and operate its Garden street branch railroad expired on the 22d of March, 1905. The cross appeal of the defendants is from that portion of the decree which enjoins The Forest City Railway Company from taking possession of the property described, and which also enjoins the city from in any manner attempting to put that company into possession thereof. It thus appears that the whole controversy turns upon the question whether the right of the Garden street railroad terminated March 22, 1905, or lasts until July 1, 1914, or possibly only until July 13, 1913.

The record shows that there are, among others, two lines of railroad belonging to the complainant, one of which is known as the Euclid avenue, sometimes called the "main" line, and the other the Garden street branch. Both lines run from east to west through the city in different, though generally parallel, streets up to the point of their intersection at Erie street and Euclid avenue, (or Prospect street,) from which point west, for a short distance, to the public square and Water street, the Garden street branch is authorized to use the Euclid avenue tracks.

The following (among many other) ordinances and resolutions of the council of the city were put in evidence on the trial, together with the various resolutions of complainant, in which it accepted such ordinances and resolutions. These constitute the case between the parties, and there is no contradictory evidence. Complainant contends that the Garden street grant must be measured in time by that provided for the termination of the Euclid avenue grant.

The ordinances and resolutions relating to the Euclid avenue line will be first stated. The first is a resolution, which granted to the East Cleveland Railroad Company, a corporation incorporated February 28, 1859, for that purpose, the right to construct and operate a railroad from a point on Prospect street at its intersection with Erie street, to the eastern terminus of Prospect street, which grant was for the term of twenty years from September 20, 1859. The company having obtained the necessary consents of the property owners along the line, duly located, constructed and operated the road under that resolution and within a short time after it was authorized so to do.

This was the commencement of what is known as the Euclid avenue, or sometimes (after 1868) the main line of one of the roads owned now by the complainant.

By ordinance, April 15, 1862, the company was authorized to extend its line from the intersection of Erie and Euclid streets west to the public square.

September 15, 1879, an ordinance was passed, which granted a renewal of the franchise to the East Cleveland Railroad Company to maintain and operate its whole Euclid avenue street railroad as far as Willson avenue, on the east, for a period of twenty-five years from September 20, 1879 (September 20, 1904). This ordinance makes no reference to the Garden street line, which had then been built and was in operation, and does not mention any of the streets through which that line passed, although the Garden street line had the right, under the ordinance of 1868, hereinafter mentioned, to use the tracks of the Euclid avenue line from the point of junction therewith westerly to its terminus.

On the 4th of April, 1883, another ordinance was passed, granting to the East Cleveland Railroad Company the right to extend, lay and operate its double track on Euclid avenue from the west line of Willson avenue easterly to the east line of Fairmount street, the right granted to terminate on the 20th of September, 1904, "with the said renewal of that part of said company's line lying west of Willson avenue." (Ordinance of September 15, 1879, above referred to.)

By ordinance of March 15, 1886, another grant was made to the Euclid avenue line east of Fairmount street, which grant was to cease and terminate upon the 20th of September, 1904, "as provided for said company's tracks in Euclid avenue, west of Fairmount street."

In order to change from animal power to electricity an ordinance was passed July 13, 1888, granting to the East Cleveland Street Railway Company the right to construct and operate an electric street railway on Euclid avenue from Willson avenue easterly to the city limits, and on Cedar avenue from a point near the Cleveland and Pittsburg Railway Com-

pany's right of way in that avenue, easterly to a point about 1,500 feet east of Fairmount street. The permission was given on the condition that the grant was to be exercised within six months from the passage of the ordinance. The grant was also upon condition that if the company, from any cause, should fail to extend the electric system over its entire main and Cedar avenue lines within eighteen months from the date of the passage of the ordinance, then the ordinance should be void. Nothing in the ordinance was to be construed as authorizing any increase in the fare for transportation over any portion of the company's line. The sixth section of the ordinance stated that the privilege of constructing the electric system, as provided in the ordinance, was granted "in consideration of the improved facilities hereby contemplated and the large expenditures necessary to secure the same, and shall be in force for the period of twenty-five years from and after the date of the passage of this ordinance, upon its main and Cedar avenue lines." The right to change to electric power, as given by the foregoing ordinance, was confined, it will be observed, to that portion of the Euclid avenue line east of Willson avenue, and on Cedar avenue to that part lying between the Cleveland and Pittsburg Railway Company's right of way and a point 1,500 feet east of Fairmount street. Nothing west of Willson avenue is included in that grant.

On May 13, 1889, a resolution was adopted, which authorized and required the railroad company, "as soon as practicable, to extend the use of such motive power over its main and Cedar avenue lines to the westerly termini thereof." This included those lines west of Willson avenue, and under the ordinance and resolution the Euclid avenue line was changed to an electric street railroad within the times mentioned in the ordinance and resolution.

There was no extension of time granted by the resolution of 1889 for the termination of the grant on any portion of the Euclid avenue line.

On July 17, 1893, the right was given to the company to extend its road at the intersection of Prospect and Erie streets to the intersection of Prospect and Ontario streets, and also at the intersection of Superior and Seneca streets, thence along Seneca, Lake and Ontario streets, and the council imposed upon it the duty, if required by the council, of operating its cars over the entire length of any of the lines. Other duties were imposed upon it. Complainant contends that some part of this ordinance refers to a portion of the Garden street extension, and that it requires the operation of all the Garden street cars over these tracks, and the grant is to terminate at the time mentioned in the 1888 ordinance, July 13, 1913.

The above list includes the material ordinances and resolutions pertaining particularly to Euclid avenue.

After the Euclid avenue line had been built the council, on the 14th of January, 1868, passed a resolution granting its consent to the East

Cleveland Street Railroad Company to lay down its tracks from the intersection of Prospect and Brownell streets, "to connect with the main line of its railroad," running thence through Garden and other streets to and across Willson avenue, to the eastern boundary of the city, during the period of twenty years. Willson avenue was then the eastern boundary of the city. The road could continue to use and occupy the streets, avenues and public grounds, over which its main line was then constructed and operated westerly from the junction (at Brownell and Prospect streets) of said road with the main line to its westerly terminus, for the same length of time.

This Garden street line was thereafter built, and it is asserted that it was the inception of a new and separate street railroad. It has been extended at various times since, and forms, with its various extensions, what is called the Garden street branch, and is the railroad in question.

On the 30th of March, 1868, the railroad company was permitted by ordinance of the village of East Cleveland to construct a branch railroad on Garden street, which would form an extension, in fact, of the Garden street line easterly through the village to the line of Wade street. The grant was for twenty years from the time of the completion of the work, which was to be completed within five years from the date of the passage of the resolution granting the right, March 30, 1868.

On the 25th of March, 1873, the council passed a resolution, in the preamble of which it was stated that the East Cleveland Railroad Company desired and proposed to connect their Garden street branch with the main line of their road, at the intersection of Erie and Prospect streets, and thereupon the council granted to the railroad company the "right to lay down a double track street railroad in Ohio street from their present track in Brownell street to Erie street, and in Erie street, from Ohio street to Prospect street, to connect with their main track at this point." This made a junction at Erie and Prospect streets, with the Euclid Avenue Railroad, instead of at Brownell and Prospect streets, a small difference as to length of road.

On the 23d of May, 1876, the council authorized the East Cleveland Railroad Company to extend the Garden street branch of its road at the easterly end thereof along Garden street to Baden avenue, thence to Quincy, along Quincy to New, and along New street to Garden street, there to connect with the Garden street tracks. The ordinance provided that the right therein granted should continue for twenty years from that date.

This extension placed a track in Quincy street from Baden to New street, which was a very short distance. It did make a different date for the termination of the grant than was provided for the rest of the branch, and it was to be operated "in connection with said branch and its main

line." No increase of fare was to be charged by the company on any part of its branch or of its main line or extension by reason of the extension.

In the year 1880, on the 22d of March, the council passed an ordinance authorizing the East Cleveland Railroad Company to extend the Garden street branch of its railway, from the then existing track, at the intersection of Baden avenue and Quincy street, on and along said Quincy street, in an easterly direction to the intersection of Quincy street and Lincoln avenue, "and to equip and operate the said extension *and its Garden street branch* for the period of twenty-five years from and after the passage of the ordinance." When this ordinance was passed the eastern limits of the city of Cleveland had been extended, so that the territory covered by the grants to the Garden street line was at that time included in the city of Cleveland.

In 1885, February 9, the council passed an ordinance permitting the East Cleveland Railroad Company "to extend its Garden street branch from the intersection of Quincy street and Lincoln avenue, in an easterly direction, to Woodland Hills avenue, . . . and equip and operate said extension as a single track railroad, with all necessary switches, turnouts and turntables" in connection with said branch and its main line, and terminating with the grant for the main line, but with the express condition that "no increase of fare shall be charged by said company on any part of its main line, or on said extension, by reason of said extension."

On the 17th of June, 1887, the council granted another extension to the Garden street branch, on Garden street from Baden avenue easterly to Lincoln avenue, the grant to terminate "with the grant for the Garden street main line," and no extra fare.

On the 10th of March, 1890, the council passed an ordinance which "granted the right to operate its Garden street branch by electricity" from and to the points named in the ordinance, and this grant was "to operate by electric power the said Garden street branch during the term of its present grant for said Garden street branch." Both roads were thereafter operated as electric street railroads.

On the 30th day of March, 1891, another ordinance was passed, authorizing the railroad company "to operate a second or additional track in and upon Central avenue (Garden street) from the east line of Willson avenue to the Cleveland and Pittsburg Railroad tracks." It was provided that the "right herein granted shall be valid until the expiration of the grants for the said company's main line."

On the 20th of April, 1891, an ordinance was passed which authorized the railroad company to "operate a second or additional track in and upon Quincy street from New street to Woodland Hills avenue." This was part of the Garden street line. Section 3 of the ordinance contained

the provision that the "right herein granted shall be valid until the expiration of the grants for said company's tracks on said Quincy street east of Lincoln avenue, to wit July 13, 1913."

These are the material ordinances which particularly relate to the Garden street railroad.

During March and April, 1893, the complainant herein was organized as a consolidation of several street railroads, which, it is enough to say, included, among others, the Euclid avenue and the Garden street lines, and on the 22d day of May, 1893, the consolidated railroad company (this complainant), through its vice president, addressed a communication to the council, stating that the various consolidations had been made under advice of counsel, but inasmuch as some question seemed to have arisen as to the intention of the company, it was stated that the company did not claim any rights greater than the constituent companies forming the organization; that it intended to obey all ordinances to which each and all the constituent companies were subject, and that it had, since the consolidation had been effected, issued transfer checks to all persons desiring them, to enable such persons to have a continuous ride from any East Side line to any South Side or West Side line, and from any South or West Side line of the company to any East Side line, for one fare, and would continue such system of transfers where it could not better accommodate its patrons by such through lines as it might establish; and that it disclaimed all intention of charging more than one fare for any such continuous ride; "and that its aim has been and will be to give its patrons vastly improved service and accommodations by reason of such consolidation."

The council thereupon, by resolution, consented to the consolidation of the various railroad companies named in the resolution under the name of the Cleveland Electric Railway Company, upon the condition that "only one fare shall be charged for a continuous ride on or over any line of railway formerly owned by any other of said constituent companies within the limits of the city of Cleveland; and passengers on any of such lines paying one fare shall be entitled, without extra or additional charge, to be transferred to any other of said lines and have a continuous ride thereon for said single fare." The conditions contained in the resolution were thereafter accepted by the complainant in writing.

On the 19th day of February, 1894, the council adopted "an ordinance granting permission to the Cleveland Electric Railway and the Cleveland City Railway Company to extend their tracks in Willson avenue." This avenue runs north and south and crosses many of the avenues in which some of the constituent companies of the consolidated road had laid their tracks.

The ordinance granted each railroad company the right to extend its double track railroad along Willson avenue from and to the various

points named in the ordinance, and the road was to be constructed and operated in connection with the existing tracks in Willson avenue as a double track street railroad. The two companies named in the ordinance were to jointly construct and maintain the road, and each was to have the right to occupy and use the track, wires, etc., of the other company then in Willson avenue, on such terms and conditions as the council might deem just and reasonable, unless the companies should otherwise agree. Provision was then made for the running of through cars on Willson avenue between certain points, and night cars were to be operated by the companies throughout the entire length of Willson avenue. A passenger on any car operated on any part of said Willson avenue was to have the right, on the payment of one fare, without additional or extra charge, to be transferred to any other line of either of said companies intersecting or coming to said Willson avenue, and were to have a continuous ride thereon, with the right, without additional charge, to be transferred from said second line to a car on any other line of either of these companies intersecting or coming to Willson avenue, and were to be entitled, without additional or extra charge, to be transferred to the Willson avenue line and to have a continuous ride thereon. Regulations were made for the paving of certain portions of the street by the company under the direction of the city authorities, and provision was made for widening the roadway on Willson avenue between certain points named, and for setting back curbs, hydrants, etc., all of which was to be done at the expense of the companies, which were also to comply with and perform all the general ordinances of the city relating to street railroads, then or thereafter in force. By section 10 it was provided that the grant should be in force until the 1st day of July, 1914.

On the 25th of June, 1894, the council passed "An ordinance granting the Cleveland Electric Railway the right to extend and operate its double track street railroad in Quincy street from New street to Willson avenue." This ordinance provided for the extension and operation by the Cleveland Electric Railway Company of a double track street railroad on and along Quincy street, from its then present tracks thereon, westerly to Willson avenue, connecting by curves with its Willson avenue tracks. The sixth section provided that "This grant shall terminate with the grant for said company's present line in Quincy street."

These ordinances and resolutions are those which particularly relate to the extent of the grants to the railroad company for the Euclid avenue and for the Garden street lines. Other ordinances and resolutions were passed, showing, in connection with those already in evidence, as insisted upon by the complainant, the existence of a general system for the operation of the roads owned by the complainant, including the Euclid avenue and Garden

street lines, as a unit, and the necessity existing for operating all of the lines in connection with each other for the life of the longest grant. And it is insisted that this was the obvious intention of the council, to be gathered from the various ordinances, among them those especially above adverted to.

Mr. Justice PECKHAM, after making the foregoing statement, delivered the opinion of the Court.

Out of these various ordinances and resolutions arise the difficulties suggested in this case. The facts are somewhat complicated by reason of their number, and the inferences to be drawn from them are not always perfectly plain and certain. The complainant contends that, by reason of the action of the city council and the acceptance by the complainant of the various ordinances and resolutions adopted by that council, a valid contract has been entered into between the city and the complainant, by which the right to use the streets named in the ordinances by the Garden street branch has been granted to complainant up to July 1, 1914, or, if it is mistaken as to that time, that then the contract terminates on the 13th of July, 1913. The city contends that neither date is right, but that the contract, so far as it related to the Garden street branch, terminated on the 22d of March, 1905.

The rules of construction which have been adopted by courts in cases of public grants of this nature by the authorities of cities are of long standing. It has been held that such grants should be in plain language, that they should be certain and definite in their nature, and should contain no ambiguity in their terms. The legislative mind must be distinctly impressed with the unequivocal form of expression contained in the grant, "in order that the privileges may be intelligently granted or purposely withheld. It is matter of common knowledge that grants of this character are usually prepared by those interested in them, and submitted to the legislatures with a view to obtain from such bodies the most liberal grant of privileges which they are willing to give. This is one among many reasons why they are to be strictly construed." (*Blair* v. *Chicago*, 201 U. S. 400, 471.) In the case cited this court has had occasion to state the principle of construction and to cite some of the authorities upon which it is based. This has been so lately done that it is unnecessary to more than refer to that case as authority for the doctrine above stated.

Before proceeding with an examination of the various ordinances and resolutions referred to in the foregoing statement, it is well to say that we do so upon the assumption that the legislature has heretofore granted to the city council of Cleveland most comprehensive power to contract with street railroads within its limits, with regard to the use of its streets, and

the length of time for which such use may be granted, not longer than twenty-five years. (*City of Cleveland* v. *Cleveland City Railway Company*, 194 U. S. 517, 533; *Cleveland* v. *Cleveland Electric Railway Company*, 201 U. S. 529, 541.) Therefore, in deciding this case, we assume the validity of the contract, whatever it is, that was made. The only question involved herein is one of construction and intent.

The most important of the many ordinances and resolutions relating to the Euclid avenue line, commencing in 1859, have been referred to in the foregoing statement of facts because of the contention of complainant that the Garden street branch is nothing but an extension and, in reality, as in law, a component part of the Euclid avenue line, and that the Garden street grant is limited and governed by the time of the expiration of the Euclid avenue grant. In other words, that the grant of 1888 to the Euclid avenue line of the right to change its motive power, and extending the termination of the grant until twenty-five years from that date, thereby extended the termination of the grant to the Garden street branch to the same time, although the whole branch road had been separately and otherwise provided for, and had never before had the same termination as the Euclid aveuue line. The grant is to be implied which is to work such a change in a grant then existing in specific and direct language. The same argument is also set forth in regard to the ordinance of July 17, 1893, which will be again referred to.

Under these circumstances it is important to direct special attention to the Garden street branch.

The East Cleveland Railroad Company, having built and operated its road through the various streets mentioned in the ordinance of 1859, granting it leave so to do, became desirous of building another road in connection with the one it was then operating, but there was no statute at that time in Ohio permitting the extension of a road then built, and the company therefore in 1867, and the early part of 1868, took the same proceedings to acquire the right to build the new road that it had taken to build the former, although it did not seek a new incorporation. As a railroad company already existing, it applied to the council of the city of Cleveland for leave to construct a street railroad from the intersection of Prospect and Brownell streets, to connect with the main line of its road, and thence through various streets and along the center of Garden street, to and across Willson avenue, to the easterly boundary of the city. It procured the consents of the property owners along the line; notice for the reception of bids was published by the city as provided for in the statute, and the railroad company made a formal bil for the privilege of laying down its tracks through the various streets, and named the rates of fare which would be charged. That bid was the lowest, if not the only one, made, and it was duly accepted, and the privilege was granted to build a railroad in Garden

street, and to operate it for twenty years from the date of the adoption of the ordinance, January 14, 1868, and the company was to continue to use the western end of the Euclid avenue road as stated in the ordinance. The ordinance was accepted and the road built. At this time the grant to the Euclid avenue line expired September 20, 1879.

Referring to the procedure under which the Garden street branch was created and the permission of the city council to build the road obtained, it is plain that the branch thus built was not a mere extension or part of the Euclid avenue line, so that a grant to the latter necessarily covered the other as an inseparable part of it, but was a distinct line, with a separate route, with the exception of a short distance at the west end, where it was permitted to use the tracks of the Euclid avenue line. The termination of the right was at a different time from that provided for the Euclid avenue line. This use of the Euclid avenue tracks for a short distance did not make the Garden street branch a mere extension of the former road. Whether authorized by its charter to build the Garden street road is not important. It did so, and its right to do it was given by an ordinance of the council, which has been recognized as valid ever since. Because on some occasions it has been called a branch does not alter the weight to be given the facts stated, or turn the branch into a mere extension where it has been otherwise uniformly treated.

It is contended that by the resolution of March 25, 1873, which granted to the East Cleveland Railway Company the right to lay a double track street railroad, intersecting with its main line at Erie street and Prospect street, and thence through other streets mentioned in the resolution, the Garden street line thereby became an extension of the main line, or was recognized as a mere extension. The preamble to that resolution recites that the railroad company desires to connect the Garden street branch with the main line of their road at the intersection of Erie and Prospect streets, and to remove the other track from Brownell street, between Ohio and Prospect streets, and therefore permission is granted to the company so to do. That resolution provided simply for changing the connection of the Garden street branch with the Euclid avenue line from Brownell street to Erie street, and for the taking up of the track on Brownell street, between Ohio and Prospect streets. It did not make the Garden street branch any more of an extension of the main line than it had been before. The branch road certainly did not become a part of the main road, simply because it ran in connection with it, or because it ran over a small portion of the tracks of that road. It remained what it started out as, a road with a separate route and a different term of life.

The grant made in 1876 to the company to extend its Garden street tracks from its then terminus at Baden street, to and along other streets towards the east, with the right to equip and operate said extension for

twenty years, in connection with the said Garden street branch and its main line, had no effect upon the question we are discussing. That extension of the tracks of the Garden street branch spoken of in the ordinance was also a short one, and was to terminate at a different time from that then existing in regard to the other portion of the Garden street branch. That it was to be operated in connection with its Garden street branch and the main line did not make the branch as extended a part of the main line, or alter the fact that the branch was a separate road, although operated in connection with the main line. It is quite difficult to see why the right to operate this particular extension should have been granted for twenty years or until 1896, instead of being limited to terminate with the branch, but at any rate, the grant is in unambiguous terms, and states in so many words the length of time it is to last. Its importance is not very great, and is entirely effaced by the subsequent ordinance of 1880, which provided for the the termination of the whole Garden street branch at the time specified, 1905.

By that ordinance (March 22, 1880) the question of the termination of the grant for the whole Garden street branch was distinctly settled. By it the right to extend that branch of its railroad in an easterly direction, on and along Quincy street, was given to the company, and the right "to equip and operate the said extension and its Garden street branch" was given for the period of twenty-five years from the passage of the ordinance, but without increase of fare on any portion. This, of course, placed the termination of the whole grant to the Garden street branch on March 22, 1905. There is no ambiguity as to this grant, and the termination of the grants to the two roads was kept apart, one being September 20, 1904, the other March 22, 1905.

Much stress is laid by the complainant on the ordinance of the 9th of February, 1885, which was entitled "An ordinance to permit the East Cleveland Railroad Company to extend the Garden street branch of its railway." The company was thereby authorized to extend the Garden street branch from the intersection of Quincy street and Lincoln avenue, in an easterly direction, to Woodland Hills avenue. It was to be operated in connection "with said branch and its main line and terminating with the grant for the main line," but with no increase of fare. It is contended that the particular grant mentioned in this ordinance was to terminate with the grant for the main line, which would make it terminate September 20, 1904, instead of March 22, 1905. If this were the only question, of course the complainant would not insist that the grant to it should be shortened six months. But it is cited for the purpose of showing an intention of the council to limit the termination of the Garden street branch by the limitation then existing in regard to the Euclid avenue line. It is contended that from the time of the passage of this ordinance by the coun-

cil and its acceptance by the complainant the parties thereby agreed that the extension should be operated with the main line, and that its grant for such operation should expire with the grant for the main or Euclid avenue line, and that this was in pursuance of the plan by the city to have the grants to the two roads expire at the same time. And the claim is that the subsequent ordinances must be construed in the same manner and for the purpose of carrying out the same scheme. There is here undoubtedly some room for the contention of complainant, but we think, upon looking at all the facts in connection with this question, that the intention of the council was not that way. The Garden street branch, running from the intersection of Erie and Prospects streets, towards the east, terminated, at the time of this grant, at Lincoln avenue. This made a long line of road. By the ordinance it was lengthened from Lincoln avenue to Woodland Hills avenue, a comparatively short extension of track. The right granted to the whole branch line as far east as Lincoln avenue then terminated on the 22d of March, 1905, and yet by this construction of the ordinance of 1885 this small extension of track from Lincoln avenue to Woodland Hills avenue was to expire September 20, 1904. Why this difference? The ordinance did not assume in any way to alter the time of the termination of the then existing grant to the rest of the Garden street branch, but it simply limited the time of the termination of the grant for the extension then given. Hence it is difficult to see how any agreement can be found to arise from the ordinance for the simultaneous termination of all the grants to both the main line and the Garden street branch. Nor can any general scheme to have the grants of both roads terminate together be evolved from anything done by the parties up to and including 1885.

There is nothing in *Cleveland* v. *Cleveland Electric Railway*, (201 U. S. 529, 539,) that covers this case. The language of the ordinance adverted to in that case is to be applied to very different facts from those existing here. We assume the ability of the council to make such a contract as complainant contends for herein, but we think none such was made in fact.

So far as can be determined from this record, there was absolutely no reason for terminating the right to use this small extension of track in September, 1904, while the rest of the branch then existing was not to terminate until six months later. It cut up the branch line in a way which it is impossible from this record to give any reason for, and accordingly, under the then existing circumstances, it might be argued that the words, "terminate with the grant for the main line," did not mean the Euclid avenue line, but it referred to the Garden street branch, which was, as a matter of fact, the main line so far as concerned the small extension of the track from Lincoln avenue to Woodland Hills avenue. To terminate the grant for the extension at the same time with the grant for the

line thereby extended would be the most obvious and natural course to pursue. It is true the ordinance itself recognizes the "branch and its main line" as constituting two different lines, and provides that the grant is to terminate with the grant for the main line. And yet the real meaning of the ordinance, when regarded in the light of the facts then existing, becomes, to say the least, ambiguous. The general provision for the termination of the grant for the whole Garden street branch, as made in 1880, ought not to be expunged by an implication arising out of such doubtful language as is found in this 1885 ordinance. But if otherwise, it results only that the particular extension expired in September, 1904, with the grant to the Euclid avenue line, which, at that period, expired on that date.

In 1887, June 17, an extension of the Garden street branch was granted, which, by the terms of the ordinance, was to terminate "with the grant for the Garden street main line," without increase of fare being charged. Here the council, it will be observed, expressly referred to the Garden street branch as the main line, and it is undoubtedly plain that it was properly so referred to. In extending the branch, and with reference to the extension, the branch would naturally be regarded and spoken of as the main line. If not done in all cases it is somewhat difficult to find any reason for it.

Again, by an ordinance passed March 10, 1890, granting leave to change the motive power on the Garden street branch, the right was given to operate that branch by electric power "during the term of its present grant for said Garden street branch." The "present grant" for the Garden street branch was that which was granted in March, 1880, which was to terminate in twenty-five years, or March 22, 1905. Here was a clear recognition of the time when that grant expired, and there had been no ordinance or resolution of the council, since 1880, which, in our opinion, changed the termination of that grant. It is an entire mistake to say that at this time the right to operate the Garden street tracks terminated at the same time with the right of the company to operate the Euclid avenue line, or that the Garden street branch was but an extension of that line.

On the 30th of March, 1891, the right was granted to construct and operate a second or additional track upon Central avenue (Garden street) from the east line of Willson avenue to the Cleveland and Pittsburg Railroad tracks. It was provided in that ordinance that the right therein granted should be for and until the expiration of the grants for the said company's main line. Here again the question arises what was the meaning of the expression "main line" as used in this connection. The ordinance allowed a second or additional track in a street in which the company then had the right to use, and was using, a single track. So far as that extended grant was concerned, the main line was the rest of the Garden

street branch, and the same observations that we have made heretofore in regard to the main line are operative here.

It can not be possible that it was intended to limit the right to use the second or additional track, in the portion of the street mentioned, to a different time than that which existed with relation to the first track laid down by the company in the same street. Of course the two grants were meant to terminate at the same time.

At this time the grant to the company's Euclid avenue line had been extended so that it did not expire until July 13, 1913. Can it be supposed that the council intended that this short length of road, in which a second or additional track was to be laid, was to be operated with two tracks until 1905 and after that with one track until 1913? We think such a construction is not permissible, and that what is meant by the language, "main line," in that ordinance, means the line which is the main line with reference to the extension therein granted, namely, the Garden street branch, and not the Euclid avenue line.

The ordinance of the 20th of April, 1891, is somewhat important. It granted the East Cleveland Railroad Company permission to lay an additional or second track in Quincy street, from New street to Woodland Hills avenue. That street at the point indicated is part of the Garden street branch, and, as compared with the rest of the Garden street branch, is a very small portion thereof, and the ordinance only grants the right to lay an additional track. The right granted was, by the terms of section 3, to "be valid until the expiration of the grants for said company's tracks on said Quincy street east of Lincoln avenue, to wit, July 13, 1913."

It is said that the council, in such ordinance, expressly authorizes the continuation of the operation of this Central avenue (Garden street) extension until July 13, 1913, the date of the expiration of the Euclid avenue line of the company. But the language used in this ordinance as to the time of the expiration of the grant for the company's tracks on Quincy street, east of Lincoln avenue, is a clear mistake of fact. The grant, it will be observed, is not in terms an extension to July 13, 1913. The reference to that date is but the expression of an opinion that the date named is the true time of the termination of the Quincy street grants. It is not a grant extending to that date, unless the previous grants are limited to that time. Now, on April 20, 1891, the grants on Quincy street, east of Lincoln avenue, in fact terminated either in 1904 or 1905, depending upon the construction of the language of the original grant in Quincy street, made in February, 1885. That was a grant which was to expire with the termination of the grant for the main line. For the reasons already given we think that that language meant the Garden street branch, which was the main line as to that extension, and that it, therefore, expired in 1905,

March 22. There was no subsequent legislation which extended that grant beyond that time.

But if it be assumed that the grant for the company's tracks on Quincy street, east of Lincoln avenue, was to terminate with the grant for the Euclid avenue line as the main line, it must be recollected that that grant on Quincy street was made February 9, 1885, to the Garden street branch, and at that time the grant to the Euclid avenue line terminated in September, 1904. The grant of 1885 was not made to terminate with the grant for the main line, *as that main line might thereafter be extended*, but it referred to that grant as it then existed, and it was to be measured by such existing grant, and not by any subsequent extension which might be granted to the Euclid avenue line.

Nor do we think the time for the termination of the Garden street branch was in any degree affected by the consolidation of the various roads in 1893. The communication from the railway company, through its vice president, May 22, 1893, states distinctly that it "does not claim any rights greater than the constituent companies forming the organization, and that it intends to obey all ordinances to which each and all of the constituent companies were subject." Its intention to issue transfer checks, so as to have a continuous ride for one fare, gave no greater rights to the company than it theretofore had, nor did the resolution of the council, consenting to the consolidation on condition that but one fare should be charged for a continuous ride, give any greater rights to the consolidated company than each of the constituent companies had theretofore enjoyed. The consolidation does not require, in order to comply with the conditions specified in the resolution consenting to the consolidation, that the consolidated companies should be permitted to operate until the expiration of the longest grant to any of the companies. At the expiration of the grant to the Garden street branch the operation of that road might terminate, while the operation of the rest of the consolidated roads could go on perfectly well. To hold that by virtue of the consolidation, upon the conditions stated, there was an implied extension of the grant to the Garden street branch of at least eight years, is to violate the rules of construction above referred to in regard to grants of this nature.

It is also strongly urged by the complainant that the ordinance passed soon after the consolidation ordinance, viz., the ordinance of July 17, 1893, not only imposed additional burdens on the consolidated company, but that the ordinance relates to a portion of the line originally constructed as part of the Garden street branch, and that it also required the operation of all the Garden street cars over these tracks, so that the council legislated as to the operation of the tracks upon Garden street and provided that such operation should continue until July 13, 1913. It is true the ordinance provided that the grant therein made should be limited to the above date, and

there were certain conditions attached to the making of the grant, but it is quite plain to us that the ordinance could not be read as thereby extending the time for the termination of the Garden street branch without a most violent implication, based upon a very small foundation. This is made clear when it is seen that the streets through which the ordinance provides for extending the double track railroad formed no part of the line originally constructed as part of the Garden street branch. The latter road was permitted to use, for a short distance, the tracks of the Euclid avenue line from a point at the junction of Brownell street (subsequently made Erie street) with Prospect street, west to the public square. But that portion of the track of the Euclid avenue line was never part of the line originally constructed for the Garden street branch, nor did it become such because subsequently the branch road was permitted to use it for the passage of its cars to the public square. It is quite clear, therefore, that the limitation of the time for the termination of the grant provided for in the sixth section of the ordinance was not also an extension of the time for the termination of the separate grant to the Garden street branch from 1905 to 1913.

The same may be said of the ordinance of February 19, 1894, extending the tracks in Willson avenue. While the council consented to the extension by the complainant and the Cleveland City Railroad Company of the line of railway in Willson avenue, and also to the operation of that line in connection with other lines of the consolidated company, which included the Garden street branch, yet it can not be held that there arose from that ordinance, when accepted by the company, a contract which should extend the time on all of the roads until the expiration of the grant contained in that ordinance, July 1, 1914. By such means an implied extension of time, affecting over 200 miles of track, as is stated, would be accomplished by making these conditions in regard to the Willson avenue grant a substitute for a grant, in plain language, affecting the Garden street branch. On the contrary, we think that the effect of that ordinance was simply to make it necessary for the Garden street branch and the other roads also, to comply with the conditions set forth in the ordinance until the expiration of their respective and existing grants, but that ordinance did not thereby extend the various other railroad grants by implication. There is no such connection between the various roads as to make it necessary, in order to operate one, that all the others should be in operation as a unit, and as comprehending one indivisible system. There is nothing in this record which shows any difficulty whatever in operating the Garden street branch as separate from the rest of the so-called system, or in operating that system separate from the branch. If the council had intended to extend the time of the termination of the

various grants to these railroads it surely would have said so, and not left it to such vague and uncertain presumptions.

The chief importance of the various ordinances and resolutions for the extension of the Garden street branch, coupled with the user of the tracks of the Euclid avenue line by the branch road from Erie street west to the public square, and providing for but one fare over the whole road, is to strengthen, if possible, the contention of complainant that such branch has always been treated by the city and the company as a mere extension of the Euclid avenue line and to be operated in connection with it, so that a grant extending the time of the termination of the latter line included thereby the Garden street branch. We think the contention is not justified by the facts. The whole history of the branch line shows differently. Even in the important matter of a change of motive power, the Euclid avenue line was provided for in 1888 and 1889, while there was a separate and distinct provision made for the Garden street branch in 1890, and a statement therein made that the permission was granted to the Garden street branch during the term of the present grant to said branch.

A careful examination of the whole record leads us to the opinion that there is no error therein so far as the complainant's appeal is concerned, and the decree upon its appeal is

Affirmed.

Upon the appeal of the defendants, we think little need be said. The defendants insist that, upon the termination of the grant to the Garden street branch, the rails, poles and other appliances for operating that road, and then remaining on the various streets, became the property of the city or at least that the city had the right to take possession of the streets and of the rails, tracks, etc., therein existing. We agree with the court below in the opinion that the title to the property remains in the railroad company which had been operating the road, and we are of opinion that The Forest City Railway Company had no rights in the streets, so far as to affect the right of the complainant to its property then existing in such streets. How that property may be disposed of is not now a matter before this court. We only hold that the defendant company cannot avail itself of the provisions of the ordinance of January 11, 1904, so far as taking possession of the property of the complainant is concerned.

The decree upon the defendant's appeal is also

Affirmed.